

ASSESSING HUMAN RIGHTS PROTECTION IN EASTERN EUROPEAN CONFLICT AND DISPUTED ENTITIES

REPORT FROM THE FIDH REGIONAL SEMINAR

Article 1: All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. Article 2: Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty. Article 3: Everyone has the right to life, liberty and security of person. Article 4: No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms. Article 5: No one shall be subjected to torture or to cruel,



Map of Eastern European Conflict and Disputed Entities



Cover photo: Soldiers take part in exercises with the Operational group of Russian Forces in the Transnistrian region of Moldova, 2012.
Credit: Sergey Kuznecov/RIA Novosti

| | |
|--|----|
| INTRODUCTION | 5 |
| The FIDH regional seminar and its objectives | 5 |
| Historical and geopolitical context | 7 |
| I. CHARACTERISING HUMAN RIGHTS VIOLATIONS IN DISPUTED ENTITIES AND CHALLENGES TO THEIR PROTECTION AND PROMOTION | 10 |
| 1.1. Main types of human rights violations | 10 |
| 1.1.1. Right to citizenship | 10 |
| 1.1.2. Freedom of movement | 11 |
| 1.1.3. Right to life and security | 13 |
| 1.1.4. Violations of economic and social rights | 14 |
| Right to an adequate standard of living | 14 |
| Right to health | 17 |
| Right to education | 17 |
| 1.1.5. Lack of an enabling environment for the civil society | 18 |
| Freedom of speech | 18 |
| Freedom of association | 19 |
| 1.2. Legal frameworks and judicial systems in disputed territories | 21 |
| 1.2.1. Ineffective judicial systems | 21 |
| 1.2.2. The limited role of Ombudsmen | 23 |
| 1.2.3. Torture and ill-treatment in the administration of Justice | 25 |
| Moving forward on human rights in disputed entities | 26 |
| II. THE INTERNATIONAL COMMUNITY'S RESPONSE | 28 |
| 2.1. Council of Europe | 29 |
| Legal and political commitments associated with the Council of Europe membership | 29 |
| 2.1.1. European Court of Human Rights | 30 |
| Defining jurisdiction over human rights violations in disputed entities | 30 |
| Specific difficulties for the ECtHR in disputed territories situations | 32 |
| 2.1.2. Other Council of Europe institutions | 33 |
| Committee of Ministers | 33 |
| Secretary General of the Council of Europe | 34 |
| Parliamentary Assembly of the Council of Europe (PACE) | 34 |
| Commissioner for Human Rights | 35 |
| Committee for the Prevention of Torture (CPT) | 36 |
| Other bodies and policies | 38 |
| 2.2. Organisation for the Security and Cooperation in Europe (OSCE) | 40 |
| 2.2.1. Peace negotiations | 40 |
| 2.2.2. Field Missions, ODIHR and other institutions | 41 |
| 2.3. European Union (EU) | 43 |
| 2.3.1. Striving for peace: high-level diplomacy, negotiations, mediation | 43 |
| 2.3.2. Aiming at conditions for peace: aid, confidence-building, monitoring | 46 |
| 2.4. United Nations | 47 |
| Human rights treaty bodies | 48 |
| Special Procedures and the UN High Commissioner for Human Rights | 49 |
| Possibilities for creative solutions | 50 |
| 2.5. The International Criminal Court | 51 |
| CONCLUSION AND RECOMMENDATIONS | 54 |

List of Abbreviations

| | |
|-------|---|
| ABL | Administrative Boundary Line |
| CAT | UN Committee Against Torture |
| CBM | Confidence Building Measures |
| CERD | UN Committee on the Elimination of Racial Discrimination |
| CPT | Committee for the Protection of Torture of the Council of Europe |
| CoE | Council of Europe |
| ECHR | European Convention on Human Rights |
| ECtHR | European Court of Human Rights |
| EPNK | European Partnership for Peaceful Settlement of the conflict over Nagorno-Karabakh |
| EU | European Union |
| EUBAM | EU Border Assistance Mission |
| EUMM | European Union Monitoring Mission |
| EUSR | European Union Special Representative |
| HCNM | High Commissioner on National Minorities of the OSCE |
| ICCPR | International Covenant on Civil and Political Rights |
| IDP | Internally Displaced Person |
| KGB | Committee for State Security (from Russian: Комитет государственной безопасности) |
| PMR | Pridnestrovian Moldavian Republic (direct translation from the Russian name: Приднестровская Молдавская Республика) |
| TMR | Transnistrian Moldovan Republic (name used by the OSCE and others) |
| MRT | Moldovan Republic of Transnistria (name used by the ECtHR) |
| NATO | North Atlantic Treaty Organisation |
| ODIHR | Office for Democratic Institutions and Human Rights of the OSCE |
| OSCE | Organisation for Security and Cooperation in Europe |
| PACE | Parliamentary Assembly of the Council of Europe |
| TRNC | Turkish Republic of Northern Cyprus |
| SNTD | Status Neutral Travel Documents |
| UN | United Nations |
| UNCHR | United Nations Commission on Human Rights |
| UNDP | United Nations Development Programme |
| UNSR | United Nations Special Rapporteur |
| UPR | Universal Periodic Review |
| USSR | Union of Soviet Socialist Republics |

“Human rights do not have any borders.

It is vital to address underlying human rights issues in disputed territories, regardless of the political recognition or the legal status of a territory.”

United Nations High Commissioner for Human Rights Navi Pillay, 14 February 2013

INTRODUCTION

The FIDH regional seminar and its objectives

In April 2014, FIDH organised a two-day seminar on *Assessing Human Rights Protection in Eastern European Disputed Entities: Transnistria, Nagorno-Karabakh, Abkhazia, South Ossetia and Crimea*. These five entities are in many ways very different and their most urgent human rights problems vary. Moreover, whilst the first four entities function as *de facto* states, Crimea has formed a *de facto* part of Russia since its annexation on 21 March 2014. However, these entities have in common a disputed and therefore ambiguous status that negatively affects the human rights enjoyment of their citizens. This is the issue that formed the principle focus of FIDH’s April seminar.

Since asserting their independence the self-proclaimed republics of Transnistria, Nagorno-Karabakh, Abkhazia and South Ossetia have developed their own legislative and executive powers, electing presidents (*de facto* authorities) that claim control over their respective territories. These authority figures are in reality politically and militarily backed by those states that have helped them to fight their wars of independence: in the case of Nagorno-Karabakh this is Armenia, and for the others, Russia. Crimea is not merely backed by Russia, but is now a *de facto* part of that state. Despite this, under international law, the *de jure* authorities of these disputed territories (Moldova, Azerbaijan, Georgia or Ukraine) continue to be responsible for human rights violations that take place there.

As the *de jure* authorities have no real leverage over the *de facto* authorities, expecting the former to improve the human rights situation in such disputed territory is unrealistic. However, as the disputed entities lack international recognition, they are not capable of ratifying the necessary human rights conventions in their own right, rendering those persons under their control unprotected by international human rights protection mechanisms, though some entities may unilaterally choose to apply certain international covenants and conventions in such



Propaganda in Tiraspol stating: Our strength is unity with Russia. – Credit: Robert B. Fishman/ Picture-Alliance/AFP

instances.¹ International organisations are wary of engaging with *de facto* authorities for fear of sending out a signal of recognition of statehood. Those states backing *de facto* authorities are considered to be ‘states exercising effective control’, implying a responsibility on their part to ensure human rights protection. In reality however, these states exhibit no political will to deliver on this responsibility in full.

This gap between the aspirations of international human rights law and the reality of disputed entities on the ground forms the backdrop to FIDH’s April seminar. Human rights are universal and should be enjoyed by all peoples. It is therefore unacceptable that disputes around the status of some geographical entities – and the legal and institutional vacuum they create – lead to a situation where individuals see their rights unprotected. Nevertheless, this is a situation that has persisted for two decades now and must urgently be addressed. In order to foster new thinking on this issue, FIDH’s seminar brought together 35 participants, most notably human rights defenders and practitioners from the disputed entities in question and the countries involved in these disputes: Moldova, Armenia, Azerbaijan, Georgia and Russia. These participants were joined by experts from the following international bodies: the Council of Europe, the European Court of Human Rights (ECHR) and the Organisation for Security and Cooperation in Europe (OSCE), as well as FIDH. The aim of the seminar was to provide these individuals

1. For example, already in 1992 the Supreme Council of Transnistria declared that the International Covenant on Civil and Political Rights (ICCPR), the European Convention on Human Rights, the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention for the Prevention and Punishment of the Crime of Genocide all apply in Transnistria (See: FIDH 2013 Report, *Torture and ill-treatment in Moldova*, p.7). South Ossetia has likewise unilaterally recognised the ICCPR, the ICESCR, the Convention for the Prevention and Punishment of the Crime of Genocide and certain protocols to these conventions (information received from the former Minister of Foreign Affairs of South Ossetia, Murat Kusmitch Dzhiyoyev).

with a platform to meet, share experiences and challenges, and look for strategies to improve human rights protection in disputed entities.²

The first day of the seminar was devoted to the practical experience of human rights defenders from both the disputed entities and the states concerned. The second day focused on the role and approach of international bodies. This report follows the structure of the seminar: Part I contains an overview and analysis of main human rights violations at issue in these territories, as well as remedies available. Part II goes on to analyse the response of the international community. Finally, Part III contains recommendations directed at international organisations, *de facto* authorities, *de jure* authorities and independent civil society organisations at entity, national and international levels.

It is important to stress that the aim of this report is to highlight and elaborate on the issues raised by seminar participants as the most pressing human rights problems in these entities. As such, the report is not intended to be exhaustive of the potential issues at stake, but rather aims to focus attention on selected themes. It is hoped that this will promote more human rights-based approaches to problems in the region, encourage the provision of access to remedies and promote further strategic reflection.

FIDH would like to thank its member and partner organisations for their presence, their valuable contributions during the Seminar, and their input throughout the preparation of this report.

Historical and geopolitical context

The disputed entities in Eastern Europe are a direct result of the former Soviet Union's strategic policy of progressively changing state boundaries to frustrate the operations of possible separatist movements and ensure the unity of the USSR. This policy created a time bomb: with the collapse of the USSR most new states were faced with border-related conflicts, many descending into full-scale war. Some of these conflicts were settled unsustainably³, whilst others were "frozen", experiencing an end to armed conflict but no sustainable peace agreement. The new entities created by this process continue to have disputed status today.

Russia's role in fomenting and perpetuating the existence of these entities was and remains crucial. After the fall of the USSR, Russia backed separatist movements in neighbouring states, helping them to politically and militarily maintain at least partial effective control over the territory of the newly proclaimed states. As these entities went on to proclaim their independence one after another, a string of conflicts followed. First came the war in Nagorno-Karabakh, fought between Azerbaijan and the majority ethnic Armenians of Nagorno-Karabakh supported by Armenia. Russia also influenced this conflict. The war lasted over 6 years (1988-1994), saw the loss of an estimated 20,000-30,000 lives and resulted in the establishment of the *de facto* state of the Nagorno-Karabakh Republic. This state remains *de jure* part of Azerbaijan. Despite international mediation efforts, notably by the OSCE's Minsk Group, tensions remain very high with regular casualties incurred by shootings at the border. Russian troops are present in Armenia. Renewed escalation of violence is a permanent threat.

2. Discussions were held under the Chatham House Rule, which is why the present report will not disclose a list of participants.

3. An example is the disputed southern region of Kyrgyzstan, where hundreds or even thousands of people were killed in ethnic clashes between ethnic Kyrgyz and ethnic Uzbek citizens of Kyrgyzstan in 1990 and 2010.

South Ossetia was fought by Ossetian separatists against Georgia since the war in 1991-1992. Abkhazian separatists subsequently fought their own war against Georgia in 1992-1993. The entire international community, including Russia, still considered Abkhazia and South Ossetia part of Georgia after the cessation of these hostilities. However, whilst these two conflicts were frozen on the surface, they continued to simmer; for example, briefly erupting in hostilities in Abkhazia's Gali district in 1998. Following the Russia-Georgian war in August 2008 Russia recognised the independence of Abkhazia and South Ossetia, thus openly and publicly expressing its willing to continue its political, financial and military support of the *de facto* authorities of these entities. Russian troops are now present in Abkhazia and South Ossetia.

The war of Transnistria was fought over four months in 1992, with Moldova on one side and Transnistrian forces – supported by Russia and Ukraine – on the other. This conflict again led to the *de facto* independence of the Transnistrian Republic. Russia continues to support the local authorities there and has military forces stationed in Transnistria.

Crimea was annexed by Russia in March 2014. A so-called “referendum” took place on 16 March 2014 in the presence of Russian armed forces and in an atmosphere of fear, harassment of critical voices, enforced disappearances and killings.⁴ According to the official data, 96.77% of Crimeans who took part in the referendum expressed their wish to join the Russian Federation. On 18 March “representatives” of Crimea and Russia signed the Treaty on Accession of the Republic of Crimea to Russia, which was ratified by the Russian Federal Assembly on 21 March 2014. The referendum was illegal as it was contrary to the Constitution of Ukraine. Moreover, the Council of Europe Venice Commission has stated that the “circumstances in Crimea did not allow the holding of a referendum in line with European democratic standards”.⁵

Nevertheless, Crimea is now a *de facto* part of Russia. This makes it different from the other disputed entities. Under international and Ukrainian law, Crimea is part of Ukraine. Ukraine is therefore legally responsible for human rights protection in the region, though in reality no longer exercises any authority there. Under Russian and new Crimean law, Crimea is part of Russia. Unlike those disputed entities where Russia backs the authorities but denies the responsibilities that fall on it under the law of occupation, the Crimean authorities are not *de facto* independent authorities: they depend on Moscow. Nevertheless, Crimea is not recognised as part of Russia by the international community. On 27 March 2014 UN General Assembly Resolution 68/262 *Calling upon States Not To Recognize Changes in Status of Crimea Region*, was supported by 100 states, with 58 abstentions and 11 votes against: Armenia, Belarus, Bolivia, Cuba, North Korea, Nicaragua, Russia, Sudan, Syria, Venezuela, Zimbabwe.⁶

4. ‘Crimea: 16 March referendum not admissible in international law’, FIDH, 14 March 2014, Available at: <http://www.fidh.org/en/eastern-europe-central-asia/ukraine>.

5. Council of Europe Venice Commission, Opinion on “whether the decision taken by the Supreme Council of the Autonomous Republic of Crimea in Ukraine to organise a referendum on becoming a constituent territory of the Russian Federation or restoring Crimea’s 19 92 constitution is compatible with constitutional principles” adopted by the Venice Commission at its 98th Plenary Session (Venice, 21-22 March 2014), available at: <http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD%282014%29002-e>.

6. Minutes of the GA 80th plenary session from 27 March 2014, available at http://www.un.org/en/ga/search/view_doc.asp?symbol=A/68/PV.80.

This international “legal vacuum” now affects roughly 3.3 million people living over a territory of 47.223 km². Moreover, it is a phenomenon that continues to spread, as shown by Crimea’s annexation and an on-going conflict in the East of Ukraine. The main dates and data contextualising this issue are presented below.

Historical and geopolitical context – key data

| | Transnistria | Nagorno-Karabakh | Abkhazia | South Ossetia | Crimea |
|------------------------------------|---|--|---|--|--|
| Self-proclaimed name | Pridniestrovian Moldavian Republic | Nagorno-Karabakh Republic | Republic of Abkhazia | Republic of South Ossetia | Crimean Federal District/ Russian Federation |
| Recognised by | 3 internationally unrecognised states: Abkhazia, South Ossetia and Nagorno-Karabakh | 3 internationally unrecognised states: Abkhazia, South Ossetia and Transnistria | 4 UN members: Russia, Nicaragua, Venezuela, Nauru and 3 internationally unrecognised states: South Ossetia, Nagorno-Karabakh and Transnistria | 4 UN members: Russia, Nicaragua, Venezuela, Nauru and 3 internationally unrecognised states: Abkhazia, Nagorno-Karabakh and Transnistria | UN General Assembly Resolution 68/262 Calling upon States Not To Recognize Changes in Status of Crimea Region, was supported by 100 states |
| Direct military presence | Russia | Armenia | Russia | Russia | Russia |
| Violent conflict | 2 March - 21 July 1992 War of Transnistria | 20 February 1988 - 12 May 1994 Nagorno-Karabakh War; armed tensions continue today | 14 August 1992 - 27 September 1993 War in Abkhazia; 20-26 May 1998 War in Abkhazia (Gali district); 7-12 August 2008 Russia-Georgia War | 5 January 1991 - 24 June 1992 South Ossetia War; 7-12 August 2008 Russia-Georgia War | Russia took military control of Crimea in March 2014, but there was no war in Crimea |
| Declaration of independence | 2 September 1990 | 2 September 1991 | 23 July 1992 | 21 December 1991 | 11 March 2014 |
| Capital | Tiraspol | Stepanakert | Sukhumi | Tskhinivali | Simferopol |
| Population | 505,153 (2014) | 138,000 (2006) | 242,862 (2012) | 55,000 (2012) | 2,352,000 (2007) |
| Main ethnic groups | 32% Moldovan, 30% Russian, 28.8% Ukrainian, 2.5% Bulgarian (2005) | 99.7% Armenian 0.1% Russian (2005) | 50.7% Abkhaz, 19.2% Georgian, 17.4% Armenian, 9% Russian, (2011) | 64.6% Ossetian 25% Georgian 3% Russian 1.2% Armenian (2008) | 58.5% Russian 24.4% Ukrainian 12% Crimean Tatar (2001) |

I. CHARACTERISING HUMAN RIGHTS VIOLATIONS IN DISPUTED ENTITIES AND CHALLENGES TO THEIR PROTECTION AND PROMOTION

This chapter summarises the Seminar discussions around the main types of human rights violations occurring in the disputed entities (1.1.). It does not seek to propose a comprehensive picture of all these violations but rather to highlight the main tendencies and compare the situations in which they occur. The Seminar also discussed the possibility (or lack thereof) of securing the protection and promotion of human rights (1.2.).

1.1. Main types of human rights violation

Several dynamics intertwine in disputed territories that act as a source of human rights violations: the nature of some of the *de facto* regimes, situations of more or less open conflict, and disputes around the status of the entities. Rights to citizenship, movement, life and security, adequate standard of living, health, education, etc are particularly affected. In addition, violations of the rights to freedom of speech and association are symptomatic of the restrictive environment in which civil society and citizens exist in these territories.

1.1.1. Right to citizenship

Violations of human rights resulting from the politicisation of the issuing and recognition of passports held a prominent place in discussions at the Seminar. These violations were identified as common to all disputed entities. All disputed entities issue their own passports, but these are only recognised by the handful of countries willing to recognise their independence (see Table 1). As such, citizens depend on the passports issued by either the *de jure* authorities or the “backing” or neighbouring countries. This has consequences for people’s daily lives, especially in terms of their rights to citizenship and freedom of movement.

The situation concerning citizenship varies from one disputed entity to another, notably on the basis of the recognition of double citizenship by *de facto* authorities.

In Abkhazia many citizens have both Abkhazian and Russian passports. However, ethnic Georgian inhabitants of Gali and Akhagori do not have Abkhazian passports and are therefore considered stateless under Abkhaz law.⁷ Most hold Georgian passports, but they cannot disclose these to Russian officials as, reportedly, doing so risks expulsion or at least that their passport be destroyed.

Nagorno-Karabakh accepts dual citizenship and issues its own passports. Citizens of Nagorno-Karabakh, 99.7% of which are Armenian, have Armenian passports and can travel to Armenia and elsewhere where this passport is recognised.

In Transnistria the passport landscape is also quite complex due to the diversity of the population living in this entity. Transnistria issues its own passports and authorises dual citizenship. As such, out of 500,000 people, around 350-400,000 are citizens of Moldova, 150-200,000 are citizens of Russia and 100-150,000 are citizens of Ukraine.

Violations of freedom of movement to the *de jure* state or abroad are one of the most tangible consequences of the difficulties surrounding passports. However, freedom of movement is also more generally infringed as a result of the tensions around borders.

1.1.2. Freedom of movement

Whilst the inhabitants of Transnistria, can generally travel out of that territory with relative freedom (though economic and trade links are nevertheless adversely affected by the territory's disputed status), the inhabitants of disputed entities nevertheless often face serious restrictions on their freedom of movement.

The people of Abkhazia and South Ossetia face serious problems when travelling across the Administrative Boundary Line (ABL) that forms a *de facto* border between these entities and Georgia. Whilst this situation has always been difficult, these difficulties were heightened after the 2008 war.⁸

Inhabitants of the predominantly Georgian districts of Gali and Akhagori, for example, face major obstacles. Official crossing points are entirely controlled by Russian border guards who create serious problems when Georgian residents – who do not hold Abkhaz or Russian passports – try to cross the ABL, be it to visit relatives, graves or schools, seek medical help on the other side or just harvest bladdernuts from the forest. Moreover, there are an insufficient number of crossing points and reaching those that do exist can take hours of travel. Those who try to cross the ABL elsewhere risk detention and a fine.

Freedom of movement is also violated by Georgia through its application of the 2008 *Law on Occupied Territories*. Under this law, entering the “occupied territories” – defined as the Autonomous Republic of Abkhazia and the Tskhinvali region (the territory of the former Autonomous Republic of South Ossetia) – from the Russian side is a criminal offence punishable under Georgia's Criminal Law.⁹ This law has been widely criticised by the international community, including the Council of Europe's Venice Commission, and was amended in 2013.

7. 'Abkhazia: the long road to reconciliation', International Crisis Group Report, 10 April 2013, p. 20.

8. *South Ossetia: The Burden of Recognition*, International Crisis Group Report June 2010, p. 17.

9. The Law of Georgia on Occupied Territories, 23 October 2008. Available at: <http://www.smr.gov.ge/docs/doc216.pdf>.

It now entails only administrative sanctions in the first instance of an offence, though repeated violations still attract criminal prosecution.

Apart from the difficulties of crossing the ABL, the people of Abkhazia and South Ossetia face problems travelling elsewhere. Only a handful of countries recognise their passports (the same countries that recognise the independence of these territories, *see Table 1*), and the holders of Russian passports from the breakaway regions are often denied visas to Western countries.

Finding concrete solutions to restrictions on freedom of movement is complicated by the politicisation of the issue. For example, the Georgian authorities started issuing ‘Status Neutral Travel Documents’ (SNTDs) for “any person legitimately residing in the Autonomous Republic of Abkhazia or the Tskhinvali Region who has not Georgian citizenship” in July 2011.¹⁰ These documents have been recognised by twelve countries,¹¹ but have had limited success. Indeed, as of May 2013, only 27 such documents were issued by the Georgian Ministry for Reconciliation and Civic Equality.¹² The initiative has been criticised by Russia and the authorities of Abkhazia and South Ossetia, who argue that Georgia has sought to further isolate the two regions or else impose *de facto* Georgian passports on their citizens under the guise of neutrality.

The freedom of movement of citizens of Nagorno-Karabakh is also seriously restricted. Nagorno-Karabakh is an enclave within Azerbaijan, which is a country to which anyone with an Armenian passport or even an Armenian-sounding surname will have difficulties to enter.

In Crimea, restrictions to freedom of movement started in late winter 2014 when unidentified pro-Russian armed persons started patrolling, and blocking roads and railways between Crimea and the rest of Ukraine. Systematic checks saw unwelcome or blacklisted persons were taken to police stations. On 25 April 2014, soon after the annexation of Crimea, Russia established a state border between Ukraine and the peninsula. Now, all Ukrainian citizens travelling to Crimea without being registered in Crimea must reportedly complete an immigration card at the border – i.e. they are treated as foreigners. Conversely, those citizens registered in Crimea who leave that territory may be refused entry upon return, especially if they belong to an unwelcome category of persons (journalists, pro-Ukrainian activists, human rights activists).

The process of registration in Crimea is in itself challenging because it is linked to a person’s citizenship. Those who did not renounce their Ukrainian citizenship within a month after 18 March are treated as foreigners and face difficulties when applying for residence permits. According to the law on the legal status of foreigners in the Russian Federation, these persons can only stay in Crimea for 90 days out of 180 days, or will face fines. The very process of retaining Ukrainian citizenship has lacked transparency and entails the overcoming of numerous obstacles. Crimeans were given a short deadline of one month to apply to retain Ukrainian citizenship, despite the fact that there were initially only four offices in which to file such an application on the entire territory of Crimea. Crimeans were also only given a month to renounce their Russian citizenship if they wished to do so. It was indeed impossible

10. For more information see the website of the Georgian Ministry for Reconciliation and Civic Equality at <http://www.smr.gov.ge/index.php?opt=102#sthash.LdXNQRRv.dpuf>.

11. The countries that recognise SNTD are: Bulgaria, Estonia, Hungary, Israel, Japan, Latvia, Lithuania, Poland, Slovakia, Romania, the Czech Republic and the United States.

12. ‘A User’s Guide To Georgia’s ‘Neutral’ Passports’, Radio Free Europe, 7 June 2012. Available at: <http://www.rferl.org/content/users-guide-to-georgias-neutral-passports/24606006.html>; ‘Romania Accepts Georgia’s Neutral Travel Documents’, Civil Georgia website, 2 May 2013. Available at: <http://www.civil.ge/eng/article.php?id=26019>.

to understand the legal consequences and make an informed decision on this significant issue in such a short period of time.¹³

1.1.3. Right to life and security

The right to life is the most fundamental of all human rights, covering, amongst other, issues such as enforced disappearances, extra-judicial killings and the imposition of the death penalty. States and their agents must both respect people's right to life themselves and protect the lives of those on their territory from infringement by third parties. The latter can be difficult in situations of violent or frozen conflict, where a climate of insecurity prevails in spite of the existence of a ceasefire. In disputed territories, authorities often fail to protect this basic right of those on their territory.

The situation in Nagorno-Karabakh is extremely sensitive. Armenian military forces are stationed within the entity and Azerbaijani forces just outside. As peace talks have brought no results, the arms race between these sides has accelerated since 2011.¹⁴ Armenia and Azerbaijan regularly accused one another of violating the ceasefire.¹⁵ Each year dozens of people are killed in skirmishes on both sides. However, international bodies rarely mention these cases.¹⁶

In Georgia there persists the problem of missing persons, following armed conflicts from 1990s and the 2008 war. This problem concerns all conflict parties and is permanently raised during the IPRM (Incident Prevention and Early Response Mechanism, for more information see part 2 of this report) and Geneva Meetings. Despite that, about 2000 people are still missing, both military personnel and civilians.¹⁷

In a context of conflict and the politicisation of relations around borders, crossing a border without the correct documentation can lead to arbitrary detention and even "hostage taking".

Georgian and regional media regularly report on the detention of Georgian citizens for having 'illegally crossed the state border'. For example, in April to May 2013 alone, Russian officers detained 60 Georgian citizens on the ABL with South Ossetia, 39 of whom were detained in the forest as they were picking bladdernuts.¹⁸ Most detained persons are released quickly upon posting bail to the sum of 2,000 Russian roubles (around 42 Euros), though in certain cases the Georgian Ministry of Internal Affairs must get involved to negotiate their release.

Detentions along the ABL have not only restricted freedom of movement and created a climate of insecurity, they have also had wider political implications. Russian border officers are not

13. 'Report of the Crimean Field Mission on Human Rights: Brief Review of the Situation in Crimea', April 2014. Available at <http://helsinki.org.ua/en/index.php?id=1400849870>.

14. 'Armenia and Azerbaijan: A Season of Risks', International Crisis Group Europe Briefing No 71, 26 September 2013.

15. 'Azerbaijan violates ceasefire with Karabakh 1,000 times this week', in: News.am, 31 May 2014. Available at: <http://news.am/eng/news/212040.htm>; 'Armenia violates ceasefire with Azerbaijan 46 times in one day', in: trend.az, 1 June 2014. Available at <http://en.trend.az/news/karabakh/2280324.html>.

16. As noted by the participants of the FIDH Seminar.

17. "Situation about Missing People in Georgia", Web Portal on Human Rights in Georgia, 11 September 2013, available at: <http://humanrights.ge/index.php?a=main&pid=17067&lang=eng>

18. See for example: 'На границе с Южной Осетией задержаны семь жителей Грузии' ('Seven Georgian citizens stopped at the border with South Ossetia'), Caucasian Knot, 12 May 2014. Available at <http://www.kavkaz-uzel.ru/articles/242447>; 'МВД ознакомило дипломатов с деталями т.н. обустройства границы' ('MIA acquainted the diplomats with the details of the border agreement') Civil Georgia website, 4 June 2013. Available at <http://civil.ge/rus/article.php?id=24865>.

alone in engaging in the practice of detaining people, with the Georgian police also detaining South Ossetians. Whilst Georgians have been held by South Ossetians primarily under official charges of ‘illegal border crossing’, South Ossetians held by Georgia face charges of engagement in killings, smuggling or terrorism.¹⁹

Moreover, the practice of ‘hostage taking’ on both sides culminates in the politicised challenge of exchanging prisoners. Although most detainees are released quickly, some spend months in arbitrary detention. The detention of prisoners in prisons administered by hostile authorities makes access to these persons immediately more difficult. The practice of detaining people and exchanging prisoners started well before 2008, but the 2008 war politicised this issue further and put it in the international spotlight. Indeed, some prisoner exchanges were so contentious that they led to mediation efforts by international bodies. The Council of Europe Commissioner for Human Rights, Thomas Hammarberg, visited Tbilisi in 2009 and was the first to define “hostage-taking” by reference to the arbitrary detention of persons and the politicised exchange of prisoners. He expressly and clearly stated the unacceptability of this practice.²⁰

Russia’s recent annexation of Crimea and reinforcement of its military presence in the territory has seen the right to life and safety blatantly violated in Crimea. Since pro-Russian forces began the taking over Crimea on 26 February 2014, abductions and enforced disappearances have been documented with some cases resulting in confirmed or presumed killings. Pro-Russian forces have targeted activists forming part of or belonging to Automaidan²¹ and Ukrainian Home,²² members of pro-Ukrainian political parties, journalists, human rights defenders, Crimean Tatars, university professors, students and anyone who has tried to help Ukrainian soldiers in Crimea.²³

1.1.4. Violations of economic and social rights

Right to an adequate standard of living

a) The situation of Internally Displaced Persons

The right to an adequate standard of living encompasses the right to adequate housing, food, water and clothing. Guaranteeing this right for internally displaced persons (IDPs) is particularly challenging. Such persons have either been outright deprived of their property or left it

19. *South Ossetia: The Burden of Recognition*, International Crisis Group Report, June 2010.

20. Tbilisi and Tskhinvali have long tried to negotiate exchanges of prisoners. On 17 February 2011 Georgia and South Ossetia reached a preliminary agreement on exchange of detainees. However, no final agreement has been reached. In January 2014, Tskhinvali renewed its request that Georgia release 12 prisoners, promising in exchange the release of Georgian prisoners. While Tbilisi would be willing to exchange most of these prisoners, the main challenge lies in the fact that Tskhinvali categorically demands the release of three prisoners convicted for terrorist attacks perpetrated in Gori in 2005. Several people died in these attacks and the offenders have been given life sentences to be served in Georgian prisons. South Ossetian civil society claims that the individuals convicted did not participate in the terrorist act and that the ruling in their case was arbitrary. For more, see ‘Tskhinvali Requests Exchange of Prisoners’, [humanrights.ge](http://humanrights.ge/index.php?a=main&pid=17538&lang=eng), 27 January 2014. Available at: <http://humanrights.ge/index.php?a=main&pid=17538&lang=eng>; ‘South-Ossetian citizens released from Georgian prisons knew nothing about today’s exchange of prisoners’, *Caucasian Knot*, 21 February 2011. Available at: <http://eng.kavkaz-uzel.ru/articles/16190/>.

21. On 9 March pro-Russian forces kidnapped activists of Automaidan Oleksandra Ryazhtseva and Kateryna Butko. They were tied down, beaten and interrogated, and then released. For further, see the information website of the Kharkiv Human Rights Protection Group. Available at: <http://www.khpg.org/en/index.php?id=1395310681>.

22. ‘Another pro-Ukrainian activist disappears in the Crimea’, 31 May 2014, Information website of the Kharkiv Human Rights Protection Group. Available at: <http://khpg.org/en/index.php?id=1401575021>.

23. ‘Ukraine: The Forgotten Victims’, FIDH CCL note, August 2014. Available at: <http://www.fidh.org/en/eastern-europe-central-asia/ukraine/15914-ukraine-the-forgotten-victims>



Georgian workers build houses for refugees in a village of Tserovani some 30 km outside Tbilisi on October 20, 2008. –
Credit: AFP PHOTO / VANO SHLAMOV

without any real possibility of return. Once displaced, they need not only long-term shelter, but also the ability to register in their place of resettlement in order to access social services and the job market.

Indeed, IDPs represent a significant human rights challenge in these entities, especially in Azerbaijan, Georgia and Ukraine. Conflict in the disputed entities has led to hundreds of thousands of people looking for safety outside conflict areas, with IDPs suffering multiple rights violations, notably affecting their rights to housing, health and education.

The situation and rights of IDPs have been a prominent issue in Georgia since the Abkhazia and South Ossetia conflicts.²⁴ In 2010, the government created a new Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia. Today, the IDP population remains high. Ministry data for 2013 states that Georgia was accommodating 271,000 persons unable to return to their homes.²⁵ Former South Ossetian President, Eduard Kokoity, sought to prevent the return of IDPs, claiming that “these people are not refugees. These are citizens who voluntarily left their houses”.²⁶

The 1988-94 Nagorno-Karabakh conflict has occasioned around 600,000 IDPs in Azerbaijan. Many wish to return to their homes. However, the stalling of the peace process means that there is no immediate prospect of them going back to Nagorno-Karabakh. Many IDPs still face precarious existence, their lives a vivid reminder of the conflict.²⁷ Indeed, they are particularly affected by violations of the right to an adequate standard of living (see below).

24. *Abkhazia: the long road to reconciliation*, International Crisis Group Report, 10 April 2013.

25. 2013 Report of the Ministry for Internally Displaced People from Occupied Territories, Accommodation and Refugees. Available at: <http://mra.gov.ge/res/docs/2014030615212665026.pdf> p. 2.

26. *South Ossetia: The Burden of Recognition*, International Crisis Group Report, June 2010.

27. ‘Tackling Azerbaijan’s IDP Burden’, International Crisis Group Europe Briefing N°67, 27 February 2012.

In Ukraine, the current crisis has multiplied the number of IDPs coming mainly from Crimea, but also from Eastern separatist regions. The United Nations High Commissioner for Refugees (UNHCR), estimates that as of 20 May 2014 there were 10,000 IDPs in Ukraine, mostly Crimean Tatars, one third of them children. Most families have relocated to central and western Ukraine (45% and 26% respectively), whilst some have stayed in the South-East.²⁸ As of April 2014, the most urgent IDP humanitarian needs in Western Ukraine had been met, though relief efforts have mainly been undertaken by civil society organisations and long term solutions coordinated by the government still need to be found.²⁹

b) Violations of the right to an adequate standard of living beyond IDPs

Conflict in and around some disputed entities has in some cases led to problems with cross-border water or gas supply. Where populations are deprived of water supply, be it for drinking, irrigation or other use, an adequate standard of living is difficult to attain. Indeed, such a situation creates obvious problems for everyday life as well as making it impossible to cultivate land, thus cutting people off from their source of livelihood. This is an issue for villages in the Georgian region of Shida Kartli, which borders South Ossetia. The pumping stations that used to provide the region with water are located in the territory controlled by Tskhinivali, which blocks the 'export' of water. Under President Mikhail Saakashvili, South Ossetia offered to provide Shida Kartli with water in exchange for a supply of Georgian gas for the Akhagori district, however, Tbilisi refused. A similar agreement was subsequently proposed by the new Georgian government, but then declined by Tskhinivali.³⁰

A similar problem presents itself in Crimea, whose population depends immensely on agriculture. Indeed, two thirds of Crimea's land is covered with step, where numerous crops such as wheat, barley, rice, sunflower and corn grow. In recent decades, about 80% of Crimea's water has been provided through the North Crimean Canal that connects the city of Kerch with the Dnieper River.³¹ Since Crimea's annexation, Ukrainian authorities have reduced the flow of water into Crimea. Exact figures are unknown, but local farmers say that water is in short supply, and that they have started drilling wells in order to be able to continue their work.³²

In disputed entities like Nagorno-Karabakh, for example, farmers cannot legally sell their produce abroad as the authorities lack a country code to allow their citizens to trade. This reinforces corruption as farmers try to find a way to overcome the isolation and sell their crops, bypassing legal obstacles.

Populations in disputed entities (and especially IDPs) experience grave violations of their rights to an adequate standard of living. Isolation has a negative impact on trade, rendering foreign direct investment virtually impossible. This in turn impedes development in disputed

28. 'UNHCR says internal displacement affects some 10,000 people in Ukraine', UNHCR website, 20 May 2014. Available at: <http://www.unhcr.org.uk/news-and-views/news-list/news-detail/article/unhcr-says-internal-displacement-affects-some-10000-people-in-ukraine.html>.

29. As established by the Civic Solidarity Platform mission in April 2014. See *In Search of New Lives: Situation of Internally Displaced Persons from Crimea*, International Partnership for Human Rights/Civic Solidarity Report, May 2014. Available at http://civicsolidarity.org/sites/default/files/situation_of_internally_displaced_persons_from_crimea.pdf.

30. As explained by participants at the FIDH Seminar.

31. 'Вода и Крым' ('Water and Crimea'), in *Ukrainska Pravda*, 5 May 2014. Available at: <http://www.pravda.com.ua/rus/columns/2014/05/5/7023978/>

32. 'Farmers In Annexed Crimea Are Running Out of Water – and they can only get it from Ukraine', *Business Insider*, 5 June 2014. Available at: <http://www.businessinsider.com/farmers-in-annexed-crimea-are-running-out-of-water-2014-6>.

entities, hindering growth and sustaining the high unemployment rates. Lack of freedom of movement and restricted exchange further violates other rights.

Right to health

The isolation of disputed entities and restricted freedom of movement creates obstacles to accessing qualified medical care. Moreover, economic difficulties and corruption can present further challenges for those in need of a doctor, rendering them simply unable to pay for such services.

Health care services are often in deplorable state in disputed entities leading many citizens to seek medical help across the *de facto* border. For example, citizens of Abkhazia often seek medical help in either Russia or Tbilisi but can be prevented from doing so. Sometimes this is due to their lack of a recognised (non-Georgian) passport and sometimes it is because they need to cross the border outside guards' working hours. Thus in 2012, the Gali district had eight patients who reportedly died from lack of access to proper medical care that they could have received in Georgia.

Deplorable detention conditions also present a specific context in which violations of the right to health occur. In Transnistria, 20% of all complaints sent to the Ombudsman by prisoners are related to medical care. Unsanitary, damp and often simply inhumane conditions to which prisoners are subjected often leads their health to rapidly decline in detention. For example, a FIDH mission to Transnistria in November 2012 encountered the case of Vitali Eriomenco, who was refused care throughout his 20 months of detention in Tiraspol. He was only given access a specialised dentist after his sister offered to pay for this service in full, and the subsequent operation took place on site in extremely unsanitary conditions.³³

Right to education

Except for in Nagorno-Karabakh, the populations of disputed entities under discussion are quite heterogeneous, being composed of various minorities speaking a variety of languages. Here, access to education in one's native language is a litmus test for the existence of minority discrimination. In Transnistria, Abkhazia, South Ossetia, and increasingly in Crimea, minorities are unable to follow courses in their native language, compromising their right to education.

The right to education is highly topical in Transnistria. Even if the Russian, Moldovan and Ukrainian are all official languages in Transnistria, Transnistria's official language is Russian, and Moldovan-language schools have long been a sensitive issue, falling victim to tensions between the government of Moldova, Russia and the de-facto Transnistrian authorities. As such, they have become greatly politicised. Eight Moldovan-language schools risked closure in September 2014. FIDH member organisation Promo-LEX is running a campaign to save the schools.³⁴

Schooling in Transnistria was addressed by the European Court of Human Rights (ECtHR) in *Catan and others vs Moldova and Russia*. Here, the applicants (pupils of three Moldovan-language schools and their parents) complained about the closure of their schools and harass-

33. *Torture and ill-treatment in Moldova, including Transnistria: shared problems, evaded responsibility*, FIDH Report, August 2013. Available at <http://www.fidh.org/en/eastern-europe-central-asia/moldovaFIDH>.

34. Campaign of the Promo-LEX association. More information at: <http://promolex.md/index.php?Lang=en>.

ment by the Transnistrian authorities. On 19 October 2012 the Court ruled that “by virtue of its continued military, economic and political support for the “MRT” [Moldovan Republic of Transnistria], which could not otherwise survive, Russia incurs responsibility under the Convention for the violation of the applicants’ rights to education”.³⁵ Russia has been ordered to pay damages to the applicants, but the decision has not been executed and several schools remain at risk of closing.

The Seminar also discussed the right to education in Georgia. Here, human rights defenders highlighted that ethnic Ossetian citizens of Georgia cannot receive an education on their mother tongue. In the past, there were several Ossetian secondary schools in Georgia but none of them now function. Experts working on reconciliation have requested the government of Georgia to launch at least Sunday schools for ethnic Ossetian children and adults in their mother tongue, but these requests have proved unsuccessful.

In the Akhlagori district of South Ossetia there are several Georgian secondary schools where local ethnic Georgian children can receive an education in their mother tongue. Georgian teachers work at local schools and children learn from text-books published by the Georgian Ministry of Education. However, the situation is much worse in Gali district of Abkhazia. Whilst the Abkhazian Constitution guarantees the right of citizens to be educated in their mother tongue, Georgian language education has been practically prohibited since 1995. As such, ethnic Georgian families from Gali send their children to Georgian schools in the Zugdidi district. However, this puts children in a very difficult position as they have to travel far to reach their schools. In some cases, children travelling to school have been stopped by Russian soldiers in a flagrant violation of their rights to education and freedom of movement, as well as children’s rights in general.³⁶

Violations of the right to education also take place in Crimea, where the education system is now under Russian administration. In this context, the Ukrainian Ministry of Education has stated that for secondary schools in Crimea, Ukrainian diplomas will be issued for all pupils that leave school. If they wish to enter Ukrainian universities, the holders of Ukrainian citizenship can do so on the same grounds as other Ukrainians but those without have the Ukrainian passport must apply as foreigners and pay higher fees³⁷.

1.1.5. Lack of an enabling environment for the civil society

Freedom of speech

Freedom of speech is restricted in the repressive and potentially explosive contexts that characterise disputed entities. Those exercising their the freedom of speech to criticise the authorities and their policies are not seen by disputed entities as valuable free-thinkers, activists, independent journalists or human rights defenders. More often they are presented as traitors, or even foreign agents whose main aim is to undermine the fragile *status quo* of *de facto* independence. Moreover, the Russian media is present in all disputed entities, transmitting Russian propaganda messages.

35. *Catan and others vs Moldova and Russia*, ECHR Grand Chamber judgement of 19 October 2012.

36. *Abkhazia: the long road to reconciliation*, International Crisis Group Report, 10 April 2013, p. 20.

37. *Report of the Crimean Field Mission on Human Rights: Brief Review of the Situation in Crimea*, April 2014. Available at <http://helsinki.org.ua/en/index.php?id=1400849870>.

The Seminar noted that a climate of fear exists in both Abkhazia and South Ossetia, where people are afraid to criticise the *de facto* government, especially in the Gali and Akhagori districts, where Georgians form a clear majority.³⁸ The case of Ms. Tamar Mearkishvili, an Akhagori Youth House Director provides a clear example. Ms. Mearkishvili was allegedly dismissed over an interview she gave in the newspaper *Echo of the Caucasus* where she spoke about the socio-economic problems in the district and criticised the local governmental officials. “If you want to live here, you must be silent or complain correctly”, Ms. Mearkishvili said in another interview, following her dismissal.³⁹

In Crimea, the media is entirely controlled. Free-thinking journalists risk persecution and all pro-Ukrainian sentiment has been silenced. In the absence of independent voices, Russian propaganda is flourishing, as it does in other disputed territories. Seminar participants noted that the propaganda transmitted by the Russian-speaking media aims to enstall the image of an enemy (Ukraine, the USA, NATO, the West in general) threatening the territory’s borders and values. A second objective of propaganda is to discredit international institutions and structures, as well as ridicule and attack human rights defenders.

As well as propaganda there have been instances of outright censorship, including a ban on mentioning Mejlis of the Crimean Tatars chairmen,⁴⁰ Mustafa Dzhemiliov and Refat Chubarov.⁴¹ This censorship adds to the already direct legal threats made against journalists. For example, most journalists who worked for Crimean mass media have fled, continuing their work from ‘mainland’ Ukraine. The Crimean media has been put under pressure. Journalists are afraid that Russian laws will gravely affect them, fearing criminal prosecution, especially under Article 208 (public calls for extremism), Article 282 (organisation of the activities of an extremist organisation), and Article 319 (insult of a public servant) of the Criminal Code of the Russian Federation.⁴² Moreover, Russian laws have now toughened punishments for those spreading separatist ideas in the Russian Federation.⁴³

In sum, the context for free speech in disputed territories is generally characterised by a combination of propaganda, censorship, and the silencing of independent voices.

Freedom of association

Freedom of association faces many of the same challenges as freedom of speech. NGOs are not viewed as providing added value, civic participation and positive change in disputed entities, but are rather seen as a danger to the political monopoly of *de facto* authorities or backing States. Just as free-thinkers risk being portrayed as traitors, NGOs risk being labelled

38. ‘Есть ли в Абхазии свобода слова?’ (‘Is there freedom of speech in Abkhazia?’) Ekho Kavkaza, 1 November 2012. Available at: <http://www.ekhokavkaza.com/content/article/24757075.html>.

39. ‘Why Tamar Mearkishvili Was Resigned from the Position of the Youth House Director?’, Web Portal on Human Rights in Georgia, 21 March 2014. Available at: <http://humanrights.ge/index.php?a=text&pid=17675&lang=eng>.

40. The Mejlis of the Crimean Tatar people is the supreme plenipotentiary representative and executive body of the Crimean Tatars. For more information see the Mejlis website: <http://qtm.org/en/general-information-about-mejlis>.

41. *Report of the Crimean Field Mission on Human Rights: Brief Review of the Situation in Crimea*, April 2014. Available at <http://helsinki.org.ua/en/index.php?id=1400849870>.

42. Despite all these threats, certain media in April 2014 still were determined to continue working, among them: the Centre of Journalistic Investigation from Simferopol, the Kafa newspaper from Feodosia, as well as Realii Crimean News Agency. See *Report of the Crimean Field Mission on Human Rights: Brief Review of the Situation in Crimea*, April 2014. Available at <http://helsinki.org.ua/en/index.php?id=1400849870>.

43. “Russia toughens up punishment for separatist ideas – despite Ukraine”, *The Guardian*, 24 May 2014. Available at: <http://www.theguardian.com/world/2014/may/24/russia-toughens-punishment-separatist-ideas>.

as foreign agents, especially if they receive funding from abroad. Repressive Russian laws passed in July 2012 stipulate that associations that receive foreign funding and are involved in vaguely defined ‘political activity’ must be considered foreign agents and formally register as such.⁴⁴ These laws have set a standard for some disputed territories.

In April 2014, South Ossetian authorities approved a law ‘on non-profit organisations’,⁴⁵ which stipulates that any NGO receiving funding from abroad is a ‘foreign agent’.⁴⁶

As Russian law is now supposed to apply to Crimea, the law on ‘foreign agents’ has important implications for NGOs on the peninsula. The majority of human rights organisations and other initiatives have already fled Crimea for fear of physical attack and criminal prosecution. This fear is founded on the enforced disappearance and torture of Crimean activists, including for example, Andrei Shchekun, reportedly abducted by pro-Russian forces on 9 March 2014, tortured for 11 days and released.⁴⁷ Those NGOs still in existence are funded by foreign donors, though there are fears that this funding will stop as Crimean NGOs now face registration under Russian administration.

In Transnistria civil society is weak and independent NGOs are few. Those that exist are closely monitored. If they engage on sensitive issues, the Committee for State Security (KGB) steps in, investigates, intimidates and has resorted to unlawful detention.⁴⁸ One Seminar participant, the head of an NGO working on justice issues, has faced harassment over a long period, including being arrested in Transnistria. Another human rights defender and journalist, Nicolai Buceatchii, has been the target of an online smear campaign accusing him of subversive activities against the government of Transnistria and of being the ‘fifth column’. The authors of this campaign published Mr Buceatchii’s applications for grants from the EU and correspondence with EU officials.⁴⁹

Videos posted online show that Mr Buceatchii is closely monitored and that his emails have been intercepted. He is now facing continuous harassment and is under immense pressure to stop his activities. However, he continues working. In an article published online in June 2014 Mr Buceatchii explains his position and the challenges in the disputed entities: *Why does opposition exist? Because people get offended. And Transnistrians have been offended by the highly painful conditions of life for a long time now. All authority offends, but authorities like*

44. See for example: ‘RUSSIAN FEDERATION: International NGOs call for end to Russian crack-down on civil society’, FIDH website, 19 December 2012. Available at: <http://www.fidh.org/en/eastern-europe-central-asia/russia/RUSSIAN-FEDERATION-International-12656>.

45. ‘НКО Южной Осетии выступают против термина “иностранный агент” в законе о некоммерческих организациях’ (‘NGOs in South Ossetia oppose the term “foreign agent” in the law on non-profit organizations’), Caucasian Knot, 23 April 2014. Available at <http://www.kavkaz-uzel.ru/articles/241418/>.

46. The text has clearly been inspired by the law in Russia, but South Ossetia went a step further: in order to be labelled a ‘foreign agent’ in Russia, an organisation has to receive money from abroad and also be involved in ‘political activity’. In South Ossetia, receiving foreign funding is the only condition of such categorisation. See ‘В Южной Осетии введено понятие “иностранный агент” в отношении НКО’ (‘South Ossetia introduced the term ‘foreign agent’ regarding NGOs’), Caucasian Knot, 1 April 2014. Available at: <http://www.kavkaz-uzel.ru/articles/240290/>.

47. ‘Ukrainian activist claims he was tortured in Crimea’, Reuters, 10 April 2014, Available at: <http://www.reuters.com/article/2014/04/10/us-ukraine-crisis-torture-idUSBREA390ZP20140410->

48. ‘Transnistria: Break the Isolation’, People in Need, May 2013.

49. ‘Заядлые «патриоты» или наезд за критику» (‘Avid ‘patriots’ or slamming criticism’), Media Centre (undated). Available at: <http://mediacenter.md/publikacii/257-zayadlye-patrioty-ili-naezd-za-kritiku.html>. See also the video published by ‘Anonymous’ on youtube: Бучацкий и Дирун 5-ая колонна в ПМР, оппозиция Приднестровья (Buceatchii and Dirun as the fifth column of the PMR). Available at <https://www.youtube.com/watch?v=Tm7Dfw6CBkI&app=desktop>.

*ours, beyond international or local control, offend its people in a particularly cynical way. They exploit the status of non-recognition and the idea of a besieged fortress.*⁵⁰

Whilst in Nagorno-Karabakh itself people can generally express their political opinions, the NK issue remains much more contentious in Azerbaijan. Thus, for example, Ms. Leyla Yunus, Director of the Institute for Peace and Democracy (IPD), who has long been involved in the Armenian-Azeri dialogue, published a joint statement with Laura Baghdasaryan, the Director of the Armenian “Region” Research Centre on 25 April 2014. The statement was entitled “Together for peace for our Children” and called for an end to hatred and enmity between the Azerbaijani and Armenian people.⁵¹ Only a few days later Ms. Yunus was subjected to renewed acts of harassment and searches by the Azerbaijani authorities.⁵²

The citizens of disputed entities risk harassment and reprisals, including threats, arbitrary detention, criminal prosecution, imprisonment and torture if they stand up against violations or associate in NGOs in order to protect their rights. Demanding changes and remedies through these means is fraught with danger, which is also why defence of human rights is a rare activity in the disputed entities. As outlined below, the absence of an enabling environment for the civil society renders concerns about the inability of judicial systems in disputed entities to provide effective remedies for human rights violation even more pressing.

1.2. Legal frameworks and judicial systems in disputed territories

The human rights violations presented in the previous section persist largely because of a lack of rule of law in the disputed territories. Here, the absence of effective remedies due to a weak and often partial judicial system is compounded by the aforementioned lack of freedom of speech and association.

1.2.1. Ineffective judicial systems

Under international law, the laws and judicial system of the *de jure* state continue to be the applicable legal framework in a disputed entity. Thus Moldovan law applies in Transnistria, Georgian law in Abkhazia and South Ossetia, Azerbaijani law in Nagorno-Karabakh and Ukrainian law in Crimea. However, in practice those inhabiting the disputed entity can make no recourse to these systems. Apart from Crimea, the disputed entities have elected presidents and created governments with Ministries of Justice that organise and maintain the judicial system. In Crimea, local authorities have been established under Russian federal law.

Thus the disputed entities have created their own legal systems, enacting their own laws, which correspond substantially with Russian law. As Russian law has become increasingly repressive, some entities have followed suit. For example, South Ossetia has recently almost

50. ‘Порядок уже есть? Теперь будет и правда’ (‘There already is order? Now there will be truth, too’), by Nicolae Buceatchii, Media Centre, 2013. Available at <http://mediacenter.md/publikacii/258-poryadok-uzhe-est-teper-budet-i-pravda.html>.

51. Joint statement by Leyla Yunus and Laura Baghdasaryan ‘Together for Peace for Our Children’, Public Dialogue Website, 25 April 2014. Available at: <http://www.publicdialogues.info/en/node/758>.

52. In July 2014, Ms. Leyla Yunus and her husband were arrested and charged *inter alia* with “treason”. ‘Azerbaijan: Arbitrary arrest and acts of harassment of Ms. Leyla Yunus and her husband’, FIDH website, 31 July April 2014. Available at: <http://www.fidh.org/en/eastern-europe-central-asia/azerbaijan/15852-azerbaijan-arbitrary-arrest-and-acts-of-harassment-of-ms-leyla-yunus>.



Flags of Abkhazia and South Ossetia on a building in Transnistria. –
Credit: Robert B. Fishman / Picture-Alliance/AFP

copied the Russian law on ‘foreign agents’, which can now be used to repress freedom of association in that territory.⁵³

Courts in disputed entities are generally influenced by the executive branch. Therefore, even if certain rights seem to be guaranteed by law, including in the Constitution, a general lack of rule of law and rampant corruption lead to the widespread non-implementation of these laws, maintaining a climate of impunity.

Transnistria, for example, has a local code of criminal procedure, an administrative code, a penal code, and a law relating to the detention of suspected or sentenced offenders. However, in many cases this legislation fails to conform to international norms regarding, for example, the prohibition of torture. The Transnistrian Penal Code was amended in October 2012 so as to provide a definition of torture, but that definition is more restrictive than the international legal standard⁵⁴ and there continues to be no mechanism to lodge torture complaints.⁵⁵ This reflects the general lack of rule of law characteristic of Transnistria.

Nagorno-Karabakh has various courts: courts of first instance, courts of appeal, courts of cassation, and a constitutional court. However,

lawyers and judges are inexperienced and generally start their careers young, sometimes as early as 23 years old.⁵⁶ Overall, the judiciary lacks independence, with courts being influenced by the executive and other political, economic and criminal elites.⁵⁷

53. More details in the sub-section on freedom of association.

54. Defined as an ‘act causing physical and mental suffering so as to obtain by force statements or actions against a person’s will and with the aim of punishing or inflicting punishment on someone’. The definition proposed in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is wider. Here, the term “torture” means ‘any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions’.

55. *Torture and ill-treatment in Moldova, including Transnistria: shared problems, evaded responsibility*, FIDH Report, August 2013. Available at <http://www.fidh.org/en/eastern-europe-central-asia/moldova> FIDH.

56. As explained by FIDH Seminar participants.

57. *Freedom in the World 2013*, Freedom House website. . Available at: http://www.freedomhouse.org/report/freedom-world/2013/nagorno-karabakh#.U44XC_1_u1g.

In Transnistria courts work on the basis of a presumption of guilt. Lawyers are assigned by the state and are rarely interested in sincerely defending their clients. They generally cooperate with the prosecution and the court, encouraging their clients to simply admit guilt. If they exercise effective defence of their client's rights they risk persecution. Theoretically an accused in Transnistria can use the services of a Moldovan lawyer, but this is difficult as *de facto* authorities consider such lawyers to be foreigners. If a client does manage to find and secure the services of a Moldovan lawyer, he/she still has to hire a Transnistrian lawyer to co-opt the Moldovan colleague on his licence. Here, the client is compelled to pay two lawyers for their service. Few can afford such a scheme.⁵⁸ Finally, contesting court decisions is practically impossible.

In sum, even assuming that relevant laws exist in disputed entities,⁵⁹ their implementation is overwhelmingly frustrated by the lack of a transparent and independent judicial system. Consequently, victims have no access to effective remedies and perpetrators enjoy impunity. Nonjudicial mechanisms like Ombudsman offices generally exist in the disputed territories, but do not seem to compensate for the weaknesses of judicial systems.

1.2.2. The limited role of Ombudsmen

In many countries, the institution of Ombudsman is an important remedial mechanism insofar as it represents the interests of the people, receives their complaints about rights violations and has the mandate to investigate them. Citizens can address an Ombudsman where they feel that the legal architecture has failed to provide justice and Ombudsmen can also actively promote human rights – extremely relevant in contexts where people are not well aware of their rights.

Ombudsmen in the disputed entities are not very well developed. Ombudsman offices were established in Transnistria in 2006, in Nagorno Karabakh in 2008, and in South Ossetia in 2012. There is currently no Ombudsman in Abkhazia. Since the annexion of Crimea, individuals in this entity have been able to complain to the Ombudsman of the Russian Federation, though those retaining Ukrainian citizenship are unlikely to have access to this remedy.

The existence of Ombudsman offices in nearly all disputed territories is a positive step. However, these institutions are ineffective in providing genuine remedy and are inadequate to overcome the general lack of rule of law in these entities. They have not necessarily led to better understanding of human rights issues in the entities.

For example, the first Ombudsman in Transnistria, Vassily Kalko – appointed by the Transnistrian Supreme Council in June 2006⁶⁰ – had made his career working for the internal affairs department in the Moldovan Soviet Socialist Republic. Just before being appointed Ombudsman, he had served as head of the Investigative Department of the Ministry of Internal Affairs of

58. *Torture and ill-treatment in Moldova, including Transnistria: shared problems, evaded responsibility*, FIDH Report, August 2013. Available at <http://www.fidh.org/en/eastern-europe-central-asia/moldovaFIDH>.

59. Laws that generally conform to international standards are not always applied. For example, in Abkhazia there is a constitutional obligation to ensure education in the mother tongue of citizens, but Georgian schools are *de facto* prohibited, for instance in the Gali district.

60. Official title in Russian: Уполномоченный по правам человека в Приднестровской Молдавской Республике.

Transnistria (2002-2006).⁶¹ As such, he was largely distrusted by lawyers in Transnistria.⁶² Moreover, his understanding of human rights problems and priorities was problematic. For example, while international experts and the FIDH mission to Transnistria established that torture is a serious issue in the entity, Mr. Kalko underplayed the problem. He openly claimed that mistreatment was a very rare occurrence and should not therefore be prioritised over issues concerning pensioners, children and the sick.⁶³

Mr. Yuri Hayrapetyan became the first Nagorno-Karabakh Ombudsman in 2008 and was reappointed on 16 April 2014.⁶⁴ He is a lawyer with experience at the Nagorno-Karabakh Prosecutor's Office and the Supreme Council, and between 2000 and 2005 was a deputy of the National Assembly of Nagorno-Karabakh, presiding over the Standing Committee on State and Legal Affairs.⁶⁵ The Nagorno-Karabakh Ombudsman can undertake certain activities such as accessing prisons. However, according to Seminar participants, his actions have not had a significant impact.

In South Ossetia, the function of Ombudsman is performed by Mr. Inal Tasoev, who the South Ossetian President had appointed as Commissioner for Human Rights in 2012. Although the Ombudsman received 150 complaints in the first four months of his work, he appeared in his initial interviews and comments to be more interested in the political dimension of his mandate than in tackling actual human rights problems. When asked to comment on the fact that in 2012 Freedom House classified South Ossetia as 'not free',⁶⁶ Mr Tasoev answered that "the fact that international organisations include South Ossetia in various lists is an example of the awareness of new political realities in the South Caucasus (...) South Ossetia is a recognized, established state". He then added that the Freedom House assessment was based on outdated and untrue information.⁶⁷

While Abkhazia does not have an Ombudsman, its government has announced plans to create the office of a Commissioner for Human Rights, tasked with educating citizens about human rights and methods for their protection, receiving complaints, preparing annual reports to inform the public authorities about the status of human rights in the Republic of Abkhazia, developing human rights legislation, appealing to national and international courts and developing international cooperation in the field of human rights.⁶⁸ It remains to be seen to what extent these plans can be implemented.

61. Official website of the Commissioner for Human Rights of the Pridniestrovian Moldavian Republic. Available at: <http://www.ombudsmanpmr.org/upolnomochenniy.htm>.

62. *Torture and ill-treatment in Moldova, including Transnistria: shared problems, evaded responsibility*, FIDH Report, August 2013. Available at <http://www.fidh.org/en/eastern-europe-central-asia/moldovaFIDH>.

63. *Ibid.*

64. Юрий Айрапетян переназначен омбудсменом НКР, [Yuri Hayrapetyan is reappointed Ombudsman of Nagorno Karabakh], NewsArmenia, 16 April 2014, available at: <http://newsarmenia.ru/karabah/20140416/43045042.html>.

65. Official website of the Human Rights Defender of the Republic of Nagorno Karabakh, available at: <http://www.ombudsnkr.am/en/biography.html>.

66. *Freedom in the World 2012*, Freedom House. Available at: <http://www.freedomhouse.org/report/freedom-world/2012/south-ossetia#.U6MGtIbZUTg>.

67. 'Приложить усилия для развития правовой грамотности' (Make an effort to develop legal literacy'), South Ossetia newspaper, 10 December 2013. Available at <http://ugo-osetia.ru/index.php/society/interview/item/2148-prilozhit-usiliya-dlya-razvitiya-pravovoy-gramotnosti>.

68. Омбудсмен (Ombudsman), at the Official site of the Acting President of the Republic of Abkhazia. Available at: <http://www.abkhaziagov.org/president/citizen/om>.

Ombudsmen in disputed entities not only suffer from a lack of independence but also from the politicisation of their mandate on the national and international stage.⁶⁹ For example, in October 2013 the Ombudsman of Nagorno-Karabakh was reportedly asked to leave an international conference organised by the Vienna-based European Ombudsman Institute (EOI). As he began his speech, Mr Hayrapeytan introduced himself as an ombudsman of the “independent Republic of Nagorno-Karabakh”, which met with strong objection by the delegate of Azerbaijan. Zaur Aliyev from Azerbaijan’s Office of Commissioner for Human Rights argued that no such state exists as the independent Republic of Nagorno-Karabakh and the participation of an ombudsman representing such a state would be contrary to international law. Here, the political dimension overshadowed the discussion, proving to be more important than an open constructive discussion on human rights protection.

1.2.3. Torture and ill-treatment in the administration of Justice

Not only are legal frameworks and judicial systems uneven and inefficient in disputed territories; the administration of Justice is characterised by ill-treatment and even torture. Arbitrary detention is common practice and the situation in prisons is either deplorable or unknown because independent bodies cannot access them to properly investigate detention conditions.

Seminar participants discussed the alarming situation of torture in Transnistria. Discussions confirmed the findings of the FIDH mission that visited Moldova, including Transnistria, in November 2012, as well as the findings of other international missions. These notably include those of Senior UN Expert Thomas Hammarberg, who visited Transnistria in 2013, and the UN Special Rapporteur on Torture, Manfred Nowak, who visited Moldova and Transnistria in 2008.⁷⁰

Inhuman and degrading treatment at police stations and in prisons takes form of beatings, deprivation of food and water, denial of toilet access and sleep deprivation. All these practices are intended to wear down the victim. Violence is often applied in such a way as to leave no visible marks.⁷¹

This violence is practised with near total impunity because the *de facto* authorities turn a blind eye to police actions and refuse to acknowledge the problem.⁷² International attention on the issue of torture in Transnistria is not currently sufficient to eradicate the practice, which is not so much a problem of law but a problem of law enforcement culture. Impunity persists due to a lack of political will to sanction perpetrators on the part of the *de facto* authorities.

The Transnistrian Constitution does prohibit torture. However, policemen see it as the only effective investigative tool available to them, openly admitting that they do not understand how they can prove crimes without coercing people to admit guilt.⁷³ State-assigned lawyers,

69. ‘Ombudsman of so-called Nagorno Karabakh Republic expelled from international conference after Azerbaijani Ombudsman’s representative objected’, APA, 4 October 2012. Available at: http://en.apa.az/xeber_ombudsman_of_so-called_nagorno_karabakh__200585.html.

70. For detailed results see *Report on Human Rights in the Transnistrian Region of the Republic* by, Thomas Hammarberg, 14 February 2013, available at: <http://www.un.md/publicdocget/41/>; and *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, Manfred Nowak, Mission to the Republic of Moldova, 12 February 2009, available at: http://www.apt.ch/content/files/Moldova_SRT%20Report%202009.pdf.

71. *Torture and ill-treatment in Moldova, including Transnistria: shared problems, evaded responsibility*, FIDH Report, August 2013. Available at <http://www.fidh.org/en/eastern-europe-central-asia/moldovaFIDH>.

72. *Ibid.*

73. As explained by participants of the FIDH Seminar.

whilst they do not maltreat their clients, indirectly support the practice by encouraging vulnerable victims of torture to simply admit guilt.⁷⁴

This issue of torture in Transnistria is relatively well known. However, Seminar participants also highlighted the challenges to assessing detention conditions in other disputed entities. Prison and police station access is particularly difficult. For example, in Nagorno-Karabakh the prison structure is inadequate to dealing with the full range of prisoners. Prisons are predominantly for male inmates, with female and juvenile offenders being sent to prisons in Armenia. As such, although claiming to be independent, Nagorno-Karabakh is incapable of administering Justice or taking responsibility for the security of its citizens.

An absence of the rule of law and the prevalence of rampant corruption in disputed territories mean that *de facto* authorities asserting the statehood of these entities nevertheless fail to comply with the responsibilities that Statehood inheres, namely to respect, protect and fulfil the human rights of individuals under their jurisdiction. In addition, those mechanisms intended to protect rights and address violations – laws and courts – do not provide effective remedies because they simply do not work. The absence of effective remedies forms the foundation on which a climate of impunity prospers, paving the way to an array of other human rights violations.

Moving forward on human rights in disputed entities

In the disputed entities of Eastern Europe, 3.3 million people live in isolation. Their rights are routinely violated and yet they have no access to effective remedies and are unable to rely on an enabling environment that might allow civil society to promote human rights compliance.

Inhabitants of the five disputed entities in Eastern Europe face numerous human rights violations on multiple levels. The potentially explosive contexts of these territories has violated people's right to life and security. Their disputed status has resulted in serious restrictions on freedom of movement, which in turn generates a wide range of other human rights challenges, such as securing an adequate standard of living (especially for IDPs), as well as rights to health and education.

In the repressive context that characterizes these entities, the very basic right of inhabitants to justice is often denied. National mechanisms are unavailable because *de jure* authorities have little if any leverage over *de facto* authorities. A lack of rule of law and high levels of corruption render local laws and courts in the disputed entities largely ineffective. Judicial systems lack independence; Ombudsman offices have little experience, are not independent and are highly politicised; citizens have little legal awareness and are therefore ill-equipped to demand their rights.

Moreover, self-help is difficult to undertake where people cannot speak freely or associate to stand up for their rights, especially where even the most legitimate criticism of the authorities is presented as treachery, as is often the case in these disputed territories.

74. *Torture and ill-treatment in Moldova, including Transnistria: shared problems, evaded responsibility*, FIDH Report, August 2013. Available at <http://www.fidh.org/en/eastern-europe-central-asia/moldovaFIDH>

While the self-proclaimed governments of these Eastern European entities claim authority over the territories they control, they fail to protect the human rights of their inhabitants. The ability to do so is an essential requirement of statehood.

As those actors directly involved in the disputes either have no real authority to improve the situation or prefer to maintain the *status quo*, the international community needs to do more to protect human rights in the disputed entities. As noted by the High Commissioner for Human Rights, Navi Pillay, human rights have no borders and problems must be addressed without regard to the political recognition of a territory. Here, the international community has an important role to play.

Part II will look at what international organisations have done and can do to address the underlying human rights issues in Abkhazia, South Ossetia, Nagorno-Karabakh, Transnistria and Crimea.

2. THE INTERNATIONAL COMMUNITY'S RESPONSE

The Seminar addressed the question of the role of international organisations⁷⁵ in bringing about improvements for the inhabitants of disputed entities.

In the absence of a viable judicial system at disputed entity level, seeking protection at the international level is often the only remedy. However, this raises a number of issues: firstly, it begs the question of the extent to which individuals can in actually access international judicial mechanism like the European Court of Human Rights (ECtHR) to lodge complaints. Secondly, it raises the issue of such a mechanism's authority to condemn rights violations in disputed entities. This latter point triggers considerations about the extent to which international mechanisms have jurisdiction over disputed entities and the proper subject of address in a ruling on violations occurring in a territory where the *de jure* State exercises no control, which lies in the hands of unrecognised *de facto* authorities and/or their backing power.

International soft law instruments provide some guidance on issues of jurisdiction. Under the OSCE *Bolzano/Bozen Recommendations on National Minorities in Inter-State Relations*,⁷⁶ while a State might have an interest in supporting persons belonging to national minorities in other States, "no State may exercise jurisdiction over the population or part of the population of another State within the territory of that State without its consent". This assertion is founded upon the principle that "respect for and protection of minority rights is primarily the responsibility of the State where the minority resides".

In its General Comment n°31, the UN Human Rights Committee states that:

"a State party must respect and ensure the rights laid down in the Covenant [on Civil and Political Rights] to anyone within the power or effective control of that State Party, even if not situated within the territory of the State Party [...]. [T]he enjoyment of Covenant rights is not limited to citizens of States Parties [...]. This principle also applies to those within the power or effective control of the forces of a State Party acting

75. The Seminar examined the role played and challenges faced by international organisations in promoting and protecting human rights in the disputed entities in Eastern Europe. Particular attention was given to the Council of Europe, as the organisation that considers itself the "guardian of human rights, democracy and the rule of law" for "800 million Europeans". The role of the European Court of Human Rights (ECtHR), which rules on individual or State applications alleging violations of rights protected by the European Convention on Human Rights, was thoroughly discussed. The Organisation for Security and Cooperation in Europe (OSCE), the European Union (EU) and the United Nations' (UN) roles and challenges have also been discussed, bearing in mind that, apart for some UN treaty bodies, these are political rather than individual recourse mechanisms.

76. Organization for Security and Co-operation in Europe, *Bolzano/Bozen Recommendations on National Minorities in Inter-State Relations*, 2 October 2008, available at: <http://www.osce.org/hcnm/33633>.

outside its territory, regardless of the circumstances in which such power or effective control was obtained.”^{77 78}

As detailed further below, ECtHR case law on state responsibility relies on the concepts of “effective overall control”, “effective authority” or “decisive influence”. Whilst the exercise of jurisdiction is presumed throughout a state’s territory, this “presumption of jurisdiction” may be limited where it is established that a state is prevented from exercising its authority over a part of its territory by a separatist regime or military occupation.⁷⁹

In addition making judicial remedies available to individuals through judicial or quasi-judicial bodies, the international community can promote human rights in disputed territories by other more indirect means. Such means might include monitoring of the human rights situation, including through visits; contacts with and recommendations to *de jure*, and possibly *de facto* authorities; and confidence-building measures. Such measures can complement and reinforce the right to remedy, though can never replace it as a means for guaranteeing that one’s rights are effectively protected.

2.1. Council of Europe

Legal and political commitments associated with Council of Europe membership

According to Article 3 of the Statute of the Council of Europe (CoE), every member “must accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms”.⁸⁰ As such, all States acceding to the Council of Europe must ratify the European Convention on Human Rights (ECHR). This was the case for Moldova and Ukraine (1995), the Russian Federation (1996), Georgia (1998), and Armenia and Azerbaijan (2001).

The European Court of Human Rights is the judicial body that rules on disputes raised in applications by individuals and States concerning violations of the ECHR. The Council of Europe’s Committee of Ministers – its main decision-making body comprised of Foreign Affairs Ministers from all member states – is responsible for supervising the execution of judgments rendered by the Court.

The legal commitments tied to entry into the Council of Europe are accompanied by supplementary political commitments on the settlement of conflicts. These are referred to in Parliamentary Assembly of the Council of Europe (PACE) Opinions and/or in Committee of

77. UN Human Rights Committee, General Comment No. 31 [80], The nature of the General Legal Obligation Imposed on States Parties to the Covenant, CCPR/C/21/Rev.1/Add.13, 26 May 2004. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G04/419/56/PDF/G0441956.pdf?OpenElement>.

78. Georgia, for example, referred to this General Comment in its submission to the Universal Periodical Review to emphasise the human rights obligations of the Russian Federation as an authority exercising effective control over the disputed entities of South Ossetia and Abkhazia. See the Human Rights Council Working Group on the Universal Periodic Review, national report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1, Georgia, 8 November 2010, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/172/00/PDF/G1017200.pdf?OpenElement>.

79. Philip Leach, *Ukraine, Russia and Crimea in the European Court of Human Rights*, 19 March 2014, available at: <http://www.ejiltalk.org/ukraine-russia-and-crimea-in-the-european-court-of-human-rights/>.

80. Statute of the Council of Europe, 5 May 1949, available at: <http://conventions.coe.int/Treaty/en/Treaties/Html/001.htm>. The Statute also foresees the expulsion of Member States seriously violating human rights (article 8).



Council of Europe Human Rights Commissioner Thomas Hammarberg walks along bombed-out buildings as he inspects situation in South Ossetia on August 24, 2008 in Tskhinvali. – Credit: AFP PHOTO/ DMITRY KOSTYUKOV

Ministers Resolutions, adopted when a State is invited to join the CoE. For example, in its prevision of the CoE’s future enlargement to Caucasus countries, the Committee of Ministers indicated in September 1992⁸¹ that a closer relationship with these countries “would demand not only the implementation of substantial democratic reforms, but also their commitment to resolve conflicts by peaceful means”.⁸²

All those countries concerned with disputed entities undertook to seek peaceful settlements to these conflicts when joining the Council of Europe. Russia also entered into specific commitments regarding certain of the disputed entities. For example, the simultaneous accession of Armenia and Azerbaijan on 25 January 2001 was perceived as conducive to a climate of trust that could play a role in both countries fulfilling their commitment to solving in a peaceful manner the Nagorno-Karabakh conflict.

2.1.1. European Court of Human Rights (ECtHR)

Defining jurisdiction over human rights violations in disputed entities

The ECtHR can only rule on cases that fall within the jurisdiction of a member state. Under the European Convention on Human Rights, it is presumed that States exercise jurisdiction throughout their territory. Article 1 of the Convention indicates that “The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this

81. In the Conclusions of the Chair of the special meeting held in Istanbul.

82. As referred in the Communication from the Committee of Ministers, Reply to Recommendation 1251 (1994) on the conflict in Nagorno-Karabakh, 3 March 1995, Doc. 7265, available at: <http://assembly.coe.int/ASP/Doc/XrefViewHTML.asp?FileID=6838&Language=EN>.

Convention”. Determining jurisdiction is treated as an admissibility issue, wherein the Court first considers its ability to rule on an application by an individual, entity or State.

The Court’s case law considers two criteria to determine the extent to which a state exercises jurisdiction over a territory. The first criteria is whether the state exercises “effective overall control” over the territory. Thus, in *Loizidou v. Turkey*, a case concerning Northern Cyprus, the Court indicated that Turkey’s “overall” military control over Northern Cyprus rendered it responsible for the policies and actions taken by the Turkish Republic of Northern Cyprus (TRNC).⁸³

This approach was further elaborated upon five years later in the interstate case of *Cyprus v. Turkey*. Here, the Court outlined that an authority exercising “effective overall control” – in this instance Turkey – would be responsible not only for the acts of its own agents but also for those of the *de facto* authorities that its presence supports.⁸⁴

That judgement also affirmed the need to avoid the establishment of any kind of “vacuum” in human rights protection in such a disputed territory as Northern Cyprus.⁸⁵

The assignation of responsibility to a foreign State exercising effective overall control over another State’s territory does not however mean that the *de jure* State is devoid of responsibility. In *Ilascu v. Moldova and Russia*, a case concerning Transnistria, the Court highlighted that whilst the “effective authority” or “decisive influence” of one power over territory belonging to another bestows obligations upon the former, it does not extinguish the positive obligations of the *de jure* State to re-establish control and therefore jurisdiction over the disputed entity.⁸⁶

83. *Loizidou v. Turkey*, Application no. 15318/89, European Court for Human Rights Judgment (Merits) (Grand Chamber), 18 December 1996, available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58007>: “It is not necessary to determine whether Turkey actually exercises detailed control over the policies and actions of the “TRNC” authorities. It is obvious from the large number of troops engaged in active duties in northern Cyprus that her army exercises overall control over that part of the island. Such control entails her responsibility for the policies and actions of the “TRNC”. Those affected by such policies therefore come within the “jurisdiction” of Turkey for the purposes of Article 1 of the Convention. Her obligation to secure to the applicant the rights and freedoms set out in the Convention therefore extends to the northern part of Cyprus.” Application no. 15318/89, Judgment (Merits)

84. “The Court’s reasoning is framed in terms of a broad statement of principle as regards Turkey’s general responsibility under the Convention for the policies and actions of the “TRNC” authorities. Having effective overall control over northern Cyprus, its responsibility cannot be confined to the acts of its own soldiers or officials in northern Cyprus but must also be engaged by virtue of the acts of the local administration which survives by virtue of Turkish military and other support. It follows that, in terms of Article 1 of the Convention, Turkey’s “jurisdiction” must be considered to extend to securing the entire range of substantive rights set out in the Convention and those additional Protocols which she has ratified, and that violations of those rights are imputable to Turkey.”

85. “Having regard to the applicant Government’s continuing inability to exercise their Convention obligations in northern Cyprus, any other finding would result in a regrettable vacuum in the system of human-rights protection in the territory in question by removing from individuals there the benefit of the Convention’s fundamental safeguards and their right to call a High Contracting Party to account for violation of their rights in proceedings before the Court.”, *Cyprus v. Turkey*, Application no. 25781/94, European Court of Human Rights Judgement (Merits) (Grand Chamber), 10 May 2001, available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-59454>.

86. “All of the above proves that the “MRT” [Moldovan Republic of Transnistria], set up in 1991-92 with the support of the Russian Federation, vested with organs of power and its own administration, remains under the effective authority, or at the very least under the decisive influence, of the Russian Federation, and in any event that it survives by virtue of the military, economic, financial and political support given to it by the Russian Federation.” [...] “the Court considers that the Moldovan Government, the only legitimate government of the Republic of Moldova under international law, does not exercise authority over part of its territory, namely that part which is under the effective control of the “MRT”. Moreover, that point is not disputed by any of the parties or by the Romanian Government. However, even in the absence of effective control over the Transnistrian region, Moldova still has a positive obligation under Article 1 of the Convention to take the diplomatic, economic, judicial or other measures that it is in its power to take and are in accordance with international law to secure to the applicants the rights guaranteed by the Convention.”

[...] “Moldova’s positive obligations relate both to the measures needed to re-establish its control over Transnistrian territory, as an expression of its jurisdiction, and to measures to ensure respect for the applicants’ rights, including attempts to secure their release.” *Ilascu and Others v. Moldova and Russia*, Application no. 48787/99, European Court of Human Rights Judgment (Merits and Just Satisfaction) (Grand Chamber), 8 July 2004, para.339, available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-61886>.

The Court cannot accept the idea of a legal vacuum for human rights protection and therefore establishes a positive obligation on the State to ensure its jurisdiction over disputed territory, whilst also assigning responsibility to a State exercising a decisive influence over the maintenance of the *de facto* authority. In practice therefore, the Court can sometimes hold Moldova responsible, sometimes recognises Russia's extraterritorial jurisdiction and sometimes declares that the responsibility is shared. Thus, in *Ilascu and others v. Moldova and Russia* both Moldova and Russia were deemed responsible for human rights violations in Transnistria, and in *Catan and Others v. the Republic of Moldova and Russia* the Court ruled that the forced closure of Moldovan/Romanian language schools in Transnistria fell within both Moldova's and Russia's jurisdiction, but only Russia was responsible for actual violations of the applicants' rights to education as Moldova had made considerable effort to support them. In both cases, the Court discharged Moldova of any positive obligation to enforce provisions of the Convention on the territory of Transnistrian, while establishing such positive obligations for Russia.⁸⁷

The Court's rulings on these matters depend on the facts in each specific case and it seeks appropriate responses in holding responsible authorities accountable. However, in ruling on matters concerning disputed territories, the Court has to overcome a number of challenges: namely, accessing information about the facts in a case, rendering decisions with geopolitical consequences that go beyond an individual case, and ensuring the execution of its decisions.

Specific difficulties for the ECtHR in the disputed territories situations

One principle challenge threatening the efficacy of the Court in disputed territories is the length of proceedings concerning this type of case. For example, two competing cases concerning Nagorno-Karabakh, *Chiragov and others v. Armenia*⁸⁸ and *Minas Sargsyan v. Azerbaijan*,⁸⁹ were filed in 2005 and 2006 respectively, regarding human rights violations that had occurred at the beginning of the 1990s. These cases were only declared admissible in 2012 and neither have yet been ruled upon.

The extreme length of time it has taken to hear these cases relates to their inter-state character. Although brought to the Court by individuals, these cases will lead to many other similar individual applications and will have important political consequences similar to those of inter-state cases. Inter-state complaints before the ECtHR are extremely rare.⁹⁰ There have only been 17 to date with four of them concerning disputed territories in Eastern Europe.⁹¹

87. *The Transnistrian Issue: Moving beyond the Status-Quo*, European Parliament Study, 26 October 2012, available at: [www.europa.europa.eu/RegData/Fetudes/Fetudes/Fjoin/F2012/F457135/FEXPO-AFET_ET\(2012\)457135_EN.pdf](http://www.europa.europa.eu/RegData/Fetudes/Fetudes/Fjoin/F2012/F457135/FEXPO-AFET_ET(2012)457135_EN.pdf).

88. *Chiragov and Others v. Armenia*, Application no. 13216/05, European Court of Human Rights, Grand Chamber Admissibility Decision, 9 January 2012.

89. *Sargsyan v. Azerbaijan*, Application no. 40167/06, European Court of Human Rights, Grand Chamber Admissibility Decision, 1 January 2012.

90. Four cases out of the 17 inter-State cases concern another disputed territory, Cyprus vs. Turkey. See the list of inter-state applications at http://www.echr.coe.int/Documents/InterStates_applications_ENG.pdf. The *Georgia v. Russia (no. 3)* case (Application no. 61186/09) concerning Georgian minors imprisoned in the Tskhinvali Region/South Ossetia was declared inadmissible. Other cases are pending include: *Georgia v. Russia (no. 2)* (Application no. 38263/08) concerning the 2008 armed conflict; *Ukraine v. Russia* (Application no. 20958/14) on interim measures against Russia in the Ukraine events.

91. On 13 March 2014, Ukraine lodged an inter-State application against Russia, seeking an interim measure demanding that Russia refrain from acts threatening the right to life and health of the civilian population on Ukrainian territory. European Court of Human Rights Press Release issued by the Registrar of the Court, "Interim measure granted in inter-State case brought by Ukraine against Russia", ECHR 073(2014), 13 March 2014, available at: <http://hudoc.echr.coe.int/web/services/content/pdf/003-4699472-5703982>. Both Ukraine and Russia are also asked to inform the Court of the measures taken to ensure that the Convention is fully complied with, in particular concerning article 2 (right to life) and 3 (prohibition of degrading and inhumane treatment) of the Convention.

The gathering of evidence is also difficult. In the two above-mentioned cases on Nagorno-Karabakh, the Court has decided not to perform fact finding missions due to the dangerous situation on the ground. In cases concerning Cyprus or Transnistria where the situation on the ground is clear and generally known to the Court, fact-finding missions may not be necessary. However, the impossibility of carrying out such missions in Abkhazia, South Ossetia and Nagorno-Karabakh has direct consequences that complicate the work of the Court.

Moreover, even when Judgements are obtained after very long proceedings, their non-execution remains a major challenge. For example, in *Ilascu v. Moldova and Russia*, the Russian authorities declared that they would not execute the Judgement because they did not consider themselves to be responsible for violations in Transnistria. Challenges concerning the execution of Judgements highlight one of the limitations upon the Court's authority: namely, political will.

The ECtHR's ability to play a judicial role in determining the existence of rights violations represents hope for people in disputed territories. However, the Court cannot resolve geopolitical disputes and can in fact be impeded by them in its work. It cannot always freely access necessary information through fact-finding missions and remains cautious in cases with major geopolitical consequences, remaining dependent on the political will of responsible States for the execution of its judgements.

2.1.2. Other Council of Europe institutions

Several Council of Europe institutions engage in monitoring Member State commitments. Those institutions founded on CoE statutes (Committee of Ministers, Parliamentary Assembly of the Council of Europe) generally play this role through political rather than judicial instruments, like PACE Resolutions, country and progress reports, and Committee of Ministers monitoring procedures⁹² or decisions. Other institutions also play an important role in monitoring the human rights situation in Member States, including in disputed territories, be they based on CoE Treaties (e.g. the Committee for the Prevention of Torture) or independent monitoring organs (like the Commissioner for Human Rights).

Committee of Ministers

The Committee of Ministers meets at ministerial level only once a year and therefore serves more as a forum to confront national visions on issues on the European continent than to monitor respect for commitments by State Parties. More regular meetings at deputy level allow for consideration of the use of various CoE instruments for ongoing disputes in a territory, as utilised during the current Crimea situation.⁹³

92. The Committee of Ministers has three monitoring procedures at its disposal. The first is monitoring as outlined under paragraph 1 of the 1994 "Declaration on compliance with commitments accepted by member States of the Council of Europe", adopted on 10 November 1994. This procedure relates to commitments to democracy, rule of law and human rights and was, for example, used concerning the situation in the Chechen Republic/Russia. The two other monitoring procedures are thematic monitoring and specific post-accession monitoring. See, *Council of Europe monitoring procedures: an overview*, Monitor/Inf(2004)2*, Strasbourg, 5 April 2004, available at: <https://wcd.coe.int/ViewDoc.jsp?id=132237&Site=COE>.

93. 'The situation in Ukraine (November 2013 – May 2014), Overview of action by the Committee of Ministers', CM/Inf(2014)14, 2 May 2014, available at: <https://wcd.coe.int/ViewDoc.jsp?id=2189553&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383>.

In accordance with Article 46 of the ECHR as amended by Protocol No. 11, the Committee of Ministers supervises the execution of judgements of the European Court of Human Rights. For example, in March 2014, the Committee of Ministers recalled the obligation incumbent upon Russia and Ukraine to comply without delay with the interim measure granted by the ECtHR following the inter-state application lodged by Ukraine.⁹⁴

The Committee of Ministers can also trigger other CoE mechanisms to monitor certain issues and highlight certain challenges. For example, in March 2014 the Committee of Ministers instructed the Advisory Committee on the Framework Convention for the Protection of National Minorities to review the situation of national minorities in Ukraine, calling upon the parties concerned to effectively follow up on all of the report's conclusions.⁹⁵

Secretary General of the Council of Europe

The Secretary General of the Council of Europe has an important power of initiative in setting-up ad-hoc or quasi-judicial monitoring procedures.⁹⁶ For example, with the agreement of the Committee of Ministers the Secretary General set up a quasi-judicial procedure in respect of alleged cases of political prisoners in Armenia and Azerbaijan. During the Crimean crisis, the Secretary General submitted the question of the legality of the referendum in the autonomous Republic of Crimea to the Venice Commission (the European Commission for Democracy through Law), which is the CoE advisory body on constitutional matters. The Secretary General can request from any State Party an explanation of the manner in which its internal law ensures the effective implementation of the provisions of the ECHR.

Parliamentary Assembly of the Council of Europe (PACE)

PACE plays a political role in securing human rights compliance through resolutions and parliamentary diplomacy. For example, PACE has condemned Russia's recognition of South Ossetia and Abkhazia in 2008, the impediment of international humanitarian access to these entities, the holding of illegal elections in South Ossetia in 2011, and the construction of border fences in South Ossetia and Abkhazia in 2013. Confronted with rising tension in Ukraine, PACE issued a Resolution⁹⁷ addressing both the human rights abuses surrounding the Euromaidan protests, and those against ethnic Ukrainian and Tatar minorities in Crimea. Here, it called upon the Ukrainian and Russian authorities respectively to put an immediate end to these abuses and prosecute all perpetrators. It also asked Russia to allow OSCE international human rights monitors to be given full access to the region. While PACE's powers are limited, it nevertheless

94. The Council of Europe Committee of Ministers acted both on the situation in Crimea and, more generally, on the human rights situation in Ukraine following the Maidan protests. It notably proposed an International Advisory Panel promote confidence through an independent investigation of acts of violence; a tripartite working party involving the Parliament, the Ministry of Justice of Ukraine and the Council of Europe to bring forward legislative reforms; assistance by the Venice Commission regarding the reform of the Constitution; and assistance in the preparation to the presidential elections scheduled for 25 May 2014.

95. *Report of the Advisory Committee on the Framework Convention for the Protection of National Minorities, Ad hoc visit to Ukraine 21-26 March 2014*, Council of Europe, CM(2014)46, 2 April 2014, available at: <https://wcd.coe.int/ViewDoc.jsp?id=2178937&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383>.

96. Although this does not concern a disputed entity, CoE Secretary General, Thorbjorn Jagland, also initiated the 'International Advisory Panel' on Ukraine investigations in April 2014 to oversee judicial investigations of violent clashes between protesters and security forces around the Kyiv Maidan demonstrations from 30 November 2013 to 21 February 2014.

97. Recent developments in Ukraine: threats to the functioning of democratic institutions, 9 April 2014, Parliamentary Assembly of the Council of Europe Resolution 1988 (2014) Provisional version, available at: <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=20873&lang=en>.

resorted to tangible action in response to the annexation of Crimea, by adopting a Resolution withdrawing the voting rights of Russia's 18-member delegation.⁹⁸

Parliamentary diplomacy aims to facilitate dialogue between elected representatives of European States involved in conflict.⁹⁹ A concrete example of parliamentary diplomacy attempts is the former PACE ad-hoc Subcommittee on Nagorno-Karabakh, established after Resolution 1416 in 2005. This Sub-Committee had difficulties overcoming mutual recriminations and perceptions of bias, which saw it being disbanded in 2008, revived in 2011 and abandoned again.¹⁰⁰

Through the Monitoring Committee, PACE supervises the implementation of obligations and commitments by Member States.¹⁰¹ Its rapporteurs have conducted regular visits to Azerbaijan (2014, 2012, 2010, 2006, etc), but these visits did not cover Nagorno-Karabakh. The May 2013 PACE delegation to Georgia sought without success to visit Abkhazia and South Ossetia. The delegation issued a press release stating with regret: "The readiness of the delegation to go to Sukhumi and Tskhinvali was a clear sign that the Assembly is willing to listen to all those concerned by the conflict. The refusal by the *de facto* authorities to meet with it has shown that a similar willingness does not currently exist in Sukhumi and Tskhinvali".¹⁰² In this context, the fact-finding visit to Georgia in January 2014 did not seek to visit these disputed territories. On the other hand, the October 2012 PACE monitoring visit to Moldova included a visit to Transnistria, where the co-rapporteurs met with representatives of the *de facto* authorities and various NGOs.¹⁰³

Commissioner for Human Rights

An independent and impartial institution, the CoE Commissioner for Human Rights holds a mandate to promote awareness of and respect for human rights in Member States through country visits. These visits are intended to allow for an evaluation of the human rights situation,

98. Thus impeding the Russian delegation from taking part in voting for judicial appointments within the ECHR or for appointments to the post of Secretary General, from holding offices such as committee chairs, and from sending election observers to other countries. Parliamentary Assembly of the Council of Europe, Resolution 1990 (2014), Reconsideration on substantive grounds of the previously ratified credentials of the Russian delegation, 10 April 2014, available at: <http://assembly.coe.int/ASP/XRef/X2H-DW-XSL.asp?fileid=20882&lang=EN>.

99. Jean-Claude Mignon, re-elected President of PACE, presents his priorities for 2013, Parliamentary Assembly of the Council of Europe, Press Release, 21 January 2013, available at: <http://assembly.coe.int/nw/xml/News/News-View-en.asp?newsid=4277&lang=2>.

100. PACE former President Jean-Claude Mignon estimates that negotiations over Nagorno Karabakh conducted through parliamentary diplomacy allowed for a restoration of dialogue between the parties rather than serious results. Other examples of parliamentary diplomacy include visits (for example, during his visit to Moldova in 2012, PACE President Jean-Claude Mignon also visited Transnistria) and hearings (PACE, for example, organised two hearings on "frozen conflicts" in 2007 and 2013, see more at <http://assembly.coe.int/nw/xml/News/News-View-en.asp?newsid=1662&lang=2>). See, "Jean-Claude Mignon reveals why PACE Sub-Committee on Nagorno Karabakh suspended its activity", APA, 27 January 2014, available at: http://en.apa.az/xeber_jean-claude_mignon_reveals_why_pace_sub_206184.html; 'PACE President makes official visit to the Republic of Moldova', Parliamentary Assembly of the Council of Europe, Press Release, 29 March 2012, available at: http://assembly.coe.int/ASP/NewsManager/EMB_NewsManagerView.asp?ID=7565&L=2. Before the 2008 war, the PACE President also had access to South Ossetia, e.g. President Van der Linden in 2007. See 'Frozen conflicts must be solved, says PACE President on eve of visit to Armenia, Azerbaijan and Georgia', Parliamentary Assembly of the Council of Europe, Press Release, 4 July 2007, available at: <http://assembly.coe.int/nw/xml/News/News-View-en.asp?newsid=1536&lang=2>.

101. The monitoring procedure of the Parliamentary Assembly, AS/Mon/Inf(2013)06rev3, 27 June 2013, Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), available at: http://assembly.coe.int/committee/MON/Role_E.pdf.

102. 'Consequences of the war between Russia and Georgia: PACE delegation regrets refusal by *de facto* authorities to meet them in Sukhumi and Tskhinvali', 17 May 2013, News, Parliamentary Assembly of the Council of Europe, available at: <http://www.assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=4488&lang=2&cat=3>.

103. 'Monitoring visit by PACE co-rapporteurs to Moldova', 15 October 2012, News, Parliamentary Assembly of the Council of Europe, available at: <http://assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=4171&lang=2&cat=3>.

the issuance of reports, opinions and recommendations to governments, and the maintenance of a permanent dialogue with these authorities. Country visits raise the issue of access to disputed territories. Where access is possible, such visits can allow for contact with *de facto* authorities, and sometimes also to concrete advances on a specific human rights situation.

All three Commissioners for Human Rights have been able to access Transnistria as part of their visits to Moldova. These visits offered an opportunity for contact with the *de facto* authorities rather than for “field visits” as such. The March 2013 visit to Moldova included a visit to Tiraspol where the Commissioner discussed the human rights situation in the region with local leaders, representatives of civil society and relevant institutions, in particular concerning shortcomings in the penitentiary system.¹⁰⁴ However, the Commissioner did not evoke the situation in Transnistria in his final report,¹⁰⁵ nor was the case in the 2009 report on Moldova, which concentrated on post-election violence.¹⁰⁶ Visits to Transnistria and contacts with *de facto* authorities there are thus possible, though not systematic.

CoE Commissioner for Human Rights Thomas Hammarberg, was among the first international actors to go to the areas touched by the conflict in Georgia in August 2008, before Russia recognised the independence of the disputed territories. His visit enabled the release of more than 100 prisoners from both sides. Now visits are more complicated as challenges come not only from the need to obtain the *de facto* authorities’ approval but also from the need not to violate Georgian Law on occupied territories, which criminalises entry into the disputed territories. In his last visit in January 2014, the Commissioner for Human Rights did not visit South Ossetia or Abkhazia and did not substantially address human rights in these territories in his report.¹⁰⁷

Access is also impossible to Nagorno-Karabakh. The Commissioner for Human Rights did not evoke Nagorno-Karabakh in his report following the May 2013 visit to Azerbaijan and did not visit the disputed entity then or during his previous visit in March 2010.

Committee for the Prevention of Torture (CPT)

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) plays an important role in human rights monitoring. Its adoption of a pragmatic approach generally enables it to travel to and report on disputed territories, and interact with the regions’ political tutor, Russia, as well as with the *de facto* authorities. However, unlike the Commissioner for Human Rights, the CPT is subject to confidentiality rules regarding visits to hospitals, places of detention, etc. This complicates visits.

104. Council of Europe, 1st Quarterly Activity Report 2013 (1 January to 31 March 2013) by Nils Muiznieks, Council of Europe Commissioner for Human Rights presented to the Committee of Ministers and the Parliamentary Assembly, CommDH(2013)10, Strasbourg, 29 May 2013, available at: <https://wcd.coe.int/ViewDoc.jsp?id=2063375>.

105. Council of Europe, Report by Nils Muiznieks, Commissioner for Human Rights of the Council of Europe following his visit to the Republic of Moldova, from 4 to 7 March 2013, CommDH(2013)19, Strasbourg, 30 September 2013, available at: <https://wcd.coe.int/ViewDoc.jsp?id=2102463>.

106. Council of Europe, Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe following his visit to Moldova - 25 to 28 April 2009, CommDH(2009)27, Strasbourg, 17 July 2009, available at: <https://wcd.coe.int/ViewDoc.jsp?id=1469277>.

107. Council of Europe, Report by Nils Muiznieks, Commissioner for Human Rights, following his visit to Georgia from 20 to 25 January 2014, 2014 CommDH(2014)9, Strasbourg, 12 May 2014, available at: <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2529949&SecMode=1&DocId=2139964&Usage=2>.

In conducting missions the CPT is confronted with a dual challenge: it must first obtain access to the disputed entity. This is often difficult as the CPT must notify the *de jure* authorities whilst having to deal with those authorities in charge of effective control. For example, to visit places of detention in Transnistria, the CPT must notify the government in Chisinau, and then submit to those institutions under the control of Tiraspol. Secondly, the CPT must ensure that it is able to meet with detainees in the absence of guards.

The CPT has visited Moldova numerous times over the last years, including three visits to Transnistria (2000, 2003, 2006).¹⁰⁸ This has allowed the CPT to publish reports with the agreement of the Moldovan Government and the “local authorities of the Transnistrian region”, and receive responses from the latter. However, 2010 saw problems in ensuring CPT access to prisoners in pre-trial detention under conditions required by the CPT to undertake its work, i.e. meeting prisoners in private. As such, the CPT interrupted the visit, only performing it in places where acceptable conditions were present.¹⁰⁹

The CPT visited Abkhazia and South Osetia in 2008 and Abkhazia in 2009.¹¹⁰ During this 2009 visit, the CPT delegation held discussions in Sukhumi with the *de facto* authorities, as well as with the Georgian authorities in Tbilisi. However, 2009 marked the last time such a CPT visit was possible for a disputed entity. While the 2006 Report on Transnistria addressed recommendations to the Chisinau authorities,¹¹¹ the recommendations made in the 2009 CPT Report on Abkhazia were mostly practical and addressed in a non-nominative manner to specific detention facilities concerned. The CPT also indirectly addressed Abkhazia by requesting detailed information on the system of legal aid for detained persons “in Abkhazia” in calling “for the death penalty to be abolished without delay” after having been informed of “the moratorium on the death penalty in the region of Abkhazia”.¹¹² The Report was sent to Tbilisi, which authorised its publication (unless the concerned government requests the publication, CPT reports are, in principle, confidential).

The quasi-impossibility of visiting Nagorno-Karabakh because of the lack of agreement between the different actors involved has been confirmed concerning the CPT, which has never been able to visit the entity.¹¹³ Indeed, the last time any visit from CoE representatives took place was the 2006 visit by the PACE Rapporteur on missing persons.

108. See the CPT web page on visits to Moldova at <http://www.cpt.coe.int/en/states/mda.htm>.

109. ‘Council of Europe anti-torture Committee interrupts visit to the Transnistrian region of Moldova’, Council of Europe, Press release – 598(2010), 30 July 2010, available at: [https://wcd.coe.int/ViewDoc.jsp?Ref=PR598\(2010\)&Language=lanEnglish&Ver=original&Site=DC&BackColorInternet=F5CA75&BackColorIntranet=F5CA75&BackColorLogged=A9BACE](https://wcd.coe.int/ViewDoc.jsp?Ref=PR598(2010)&Language=lanEnglish&Ver=original&Site=DC&BackColorInternet=F5CA75&BackColorIntranet=F5CA75&BackColorLogged=A9BACE).

110. See the CPT web page on visits to Georgia at <http://www.cpt.coe.int/en/states/geo.htm>.

111. “In the CPT’s opinion, the Moldovan authorities must now draw the necessary consequences deriving from their fundamental obligation to protect prisoners from inhuman or degrading treatment.” At the beginning of the Report, the CPT stated regarding cooperation that “The Moldovan authorities had in fact informed the delegation at the beginning of the visit (namely, on 15 March) that they could no longer go to the Transnistrian region on an official basis. They indicated that any initiative from their side to secure access for the delegation to Prison Establishment No. 8 (including accompanying the delegation from Chişinău to Bender) would result, in their opinion, in the delegation being blocked at the checkpoints set up by the local authorities at the entry to the region. [...] It is not for the Committee to enter into the details of this question, although it takes note of obstacles faced *de facto* by the Moldovan authorities in travelling to a place under their jurisdiction, located in a zone controlled by the local authorities of the Transnistrian region.” See, *Report to the Government of the Republic of Moldova on the visit to Prison Establishment No. 8 in Bender, carried out by European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on 18 March 2006*, CPT/Inf (2008) 37, 4 December 2008, available at: http://www.cpt.coe.int/documents/mda/2008-37-inf-eng.htm#_Toc142799163.

112. *Report on the visit to the region of Abkhazia, Georgia, carried out from 27 April to 4 May 2009*, CPT/Inf (2009) 38, 23 December 2009, available at: http://www.cpt.coe.int/documents/geo/2009-38-inf-eng.htm#_Toc248742220.

113. See the CPT web page on visits to Azerbaijan at <http://www.cpt.coe.int/en/states/aze.htm>.

Overall, CPT's access to disputed territories is sometimes possible, though can face numerous difficulties. The Council of Europe Progress Review Report 2012¹¹⁴ indicated that “no positive developments were observed as regards the CPT's access to regions in which the central authorities are not at present in effective control”. The *de facto* authorities of Transnistria are still not ready to accept visits by the CPT on terms acceptable to the Committee and the *de facto* authorities of Abkhazia and South Ossetia do not seem to want the CPT to exercise its mandate in those regions. The CPT intends to intensify its efforts to gain access to other regions, such as Nagorno-Karabakh.

Other bodies and policies

Other notable Council of Europe bodies include the Advisory Committee responsible for evaluating the implementation of the Framework Convention for the Protection of National Minorities (FCNM) in State Parties and advising the Committee of Ministers. The results of this evaluation consist of detailed country-specific opinions adopted following a monitoring procedure.¹¹⁵ As explained in its Opinions, the Advisory Committee is unable to “fully assess” the situation of national minorities in Nagorno-Karabakh,¹¹⁶ Abkhazia, South Ossetia¹¹⁷ and even Transnistria,¹¹⁸ because of the conflicts in those regions. However, it addresses recommendations to the respective governments in relation with the FCNM.

The Advisory Committee visited Ukraine from 21 to 26 March 2014 and adopted an *ad hoc* Report on the situation of national minorities in Ukraine on 1 April 2014.¹¹⁹ While concluding that persons belonging to the Crimean Tatars are exposed to “particular risk”, it also noted that “representatives expressed their full commitment to Ukrainian territorial integrity but pointed

114. *Council of Europe Progress Review Report 2012*, Information document prepared by the Directorate General of Administration, CM/Inf(2013)4 rev, 10 April 2013, available at: <https://wcd.coe.int/ViewDoc.jsp?id=2042247&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383>.

115. See the Framework Convention for the Protection of National Minorities website at: http://www.coe.int/t/dghl/monitoring/minorities/2_Monitoring/ACFC_Intro_en.asp.

116. In its Second Opinion on Azerbaijan, adopted on 9 November 2007, the Advisory Committee expressed its concern regarding statements made during its visit by representatives of the authorities, which sought to justify discrimination against Armenians by reference to the absence of a solution to the conflict of Nagorno-Karabakh. It also indicated its support for efforts to find a peaceful solution to the Nagorno-Karabakh conflict, a condition for the initiation of a process of voluntary return, including for persons belonging to national minorities. See, *Framework Convention for the Protection of National Minorities - Second Opinion of the Advisory Committee on Azerbaijan*, adopted on 9 November 2007, Council of Europe, Committee of Ministers ACFC/OP/II(2007)007, 10 December 2008, available at: http://www.coe.int/t/dghl/monitoring/minorities/3_fcndocs/PDF_2nd_OP_Azerbaijan_en.pdf.

117. In its first Opinion on Georgia, adopted on 19 March 2009, the Advisory Committee found that the conflict of August 2008, and those of the 1990's concerning South-Ossetia and Abkhazia, have had a negative impact on the implementation of the Framework Convention in Georgia. While noting that Abkhazia and South Ossetia are not under the effective control of the Georgian Government, which can neither impose nor guarantee the application of its legislation and policies in these two regions, it called for a stepping up of efforts by all parties to find a just and lasting solution to the conflict as soon as possible. *Framework Convention for the Protection of National Minorities - First Opinion of the Advisory Committee on Georgia*, adopted on 19 March 2009, Council of Europe, Committee of Ministers, ACFC/OP/I(2009)001, 10 October 2009, available at: http://www.coe.int/t/dghl/monitoring/minorities/3_fcndocs/pdf_1st_op_georgia_en.pdf.

118. In its third Opinion on Moldova, adopted on 26 June 2009, in addition to expressing concrete concerns on the situation of minorities, the Advisory Committee noted that Transnistria remained outside of the effective control of the Moldovan Government, making it impossible for it to ensure the effective implementation of the Framework Convention. It therefore encouraged the Moldovan authorities, together with all the parties concerned, to step up their efforts and maintain an open and constructive approach with a view to finding a just and lasting solution to the conflict concerning Transnistria while respecting the principles enshrined in the Framework Convention to guarantee the rights of persons belonging to national minorities. *Framework Convention for the Protection of National Minorities - Third Opinion of the Advisory Committee on Moldova*, adopted on 26 June 2009, Council of Europe, Committee of Ministers, CM(2009)140, 15 September 2009, available at: <https://wcd.coe.int/ViewDoc.jsp?id=1502297&Site=COE>.

119. Advisory Committee on the Framework Convention for the Protection of National Minorities, *Ad hoc Report on the situation of national minorities in Ukraine*, adopted on 1 April 2014, ACFC(2014)001, 2 April 2014, available at: www.coe.int/t2Ft%2Fdghl%2Fmonitoring%2Fminorities%2F3_FCNMdocs%2FPDF_AdHoc_Report_Ukraine_02apr2014_en.pdf.

to the practical necessity for residents of Crimea to co-operate with the local authorities in daily life, particularly when it comes to issues related to property or the performance of public duties by legal professionals”. The Advisory Committee has stressed the urgent need for an international presence to monitor the evolving situation on the ground in Crimea, including as regards on-going institutional arrangements led by the local authorities, which have a direct impact on the enjoyment of rights of persons belonging to national minorities.

The Venice Commission is the Council of Europe’s advisory body on constitutional matters.¹²⁰ For example in 2013 it commented on new draft amendments to the Georgian “Law on Occupied Territories”, which aimed at relaxing the sanction regime for illegal entries into the occupied territories. The Commission welcomed these amendments whilst noting their limits and proposing improvements towards the full decriminalisation of entry into an “occupied territory”.¹²¹ The Venice Commission has issued an opinion on the 16 March 2014 Referendum on the Crimea status, concluding that it contradicted the Ukrainian Constitution.¹²² The Venice Commission has also offered support to Ukrainian law makers in the preparation of a new Constitution for the country.

In a context that *de facto* authorities claim autonomy in the disputed territories, the Congress of Local and Regional Authorities can offer flexible models of regional autonomy on the basis of the principles of the European Charter of Local Self-Government.¹²³ In a March 2014 Declaration on the situation in Ukraine, the Congress stated: “The occupation of territories of independent states, as we saw in 2008 in Georgia and are facing now in Ukraine is unacceptable in international law and should not be tolerated”. The Congress also urged all parties to fully respect human rights and the rule of law.¹²⁴

Finally, the Council of Europe implements programmes for Confidence Building Measures (CBM) through its external offices. For the CoE, these programs aim to find “new patterns to address the question of human rights in the areas affected by the conflict”.¹²⁵ The idea is to improve tolerance and understanding, and to defuse possible tensions between communities both within member or applicant States as well as across borders. This can for example concern problems like the non-recognition of documents impeding travel, access to education or work, marriage across the *de facto* borders, difficult access to hospitals in certain areas because of limitations upon freedom of movement, etc. The Council of Europe leads confi-

120. It provides legal advice to its Member States and, in particular, to help states wishing to bring their legal and institutional structures into line with European standards and international experience in the fields of democracy, human rights and the rule of law.

121. European Commission for Democracy through Law (Venice Commission), Opinion no. 744/ 2013CDL-AD(2013)036Or on the Draft Amendments to the Law on the Occupied Territories of Georgia, available at: [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2013\)036-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2013)036-e).

122. Opinion on “whether the decision taken by the Supreme Council of the Autonomous Republic of Crimea in Ukraine to organise a referendum on becoming a constituent territory of the Russian Federation or restoring Crimea’s 1992 constitution is compatible with constitutional principles” adopted by the Venice Commission at its 98th Plenary Session (Venice, 21-22 March 2014), available at: [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2014\)002-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)002-e).

123. ‘Yavuz Milden: Flexible models of regional autonomy are alternatives to conflict’, 29 September 2008, Parliamentary Assembly of the Council of Europe, News, available at: <http://assembly.coe.int/nw/xml/News/News-View-en.asp?newsid=2159&lang=2>.

124. Council of Europe, Congress of local and regional authorities, Declaration on the situation in Ukraine, 26th Session, Strasbourg, 25-27 March 2014, available at: <https://wcd.coe.int/ViewDoc.jsp?Ref=DECLARATION%202%20%282014%29&Language=lanEnglish&Ver=original&Site=COE&BackColorInternet=C3C3C3&BackColorIntranet=CAC9A&BackColorLogged=EFEA9C>.

125. *Council of Europe Progress Review Report 2012*, Directorate General of Administration, CM/Inf(2013)4 rev, 10 April 2013, available at: <https://wcd.coe.int/ViewDoc.jsp?id=2042247&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383>.

dence building measures with Transnistria,¹²⁶ on both sides of the Dniestr,¹²⁷ South Ossetia and Abkhazia, with the aim of preparing the ground for the resolution of conflicts. In some disputed territories, the possibilities for this kind of measure depends on the general political situation. When it deteriorates, as in Abkhazia according to the CoE,¹²⁸ sustainable cooperation becomes nearly impossible.

2.2. Organisation for the Security and Cooperation in Europe (OSCE)

As successor to the Conference on Security and Cooperation in Europe (CSCE) created by the Helsinki process, the OSCE was created as a security organisation. Its approach to security is broad, covering military, economic, and human dimensions. This latter dimension encompasses both human rights and democracy commitments by OSCE participating States.

The OSCE is confronted with similar challenges as other international organisations in terms of access to the disputed entities. The organisation has field missions in all those countries concerned with disputed territories. However, it also plays a role in all peace negotiation processes around these disputed territories, which can allow for access to the entities by diplomats.

2.2.1. Peace negotiations

The OSCE is included at various levels of the Minsk Process¹²⁹ concerning Nagorno-Karabakh. The OSCE Chairperson in office supports the Minsk Group, whose co-chairs the US, French and Russian ambassadors have access to Nagorno-Karabakh. The ‘Personal Representative of the Chairperson-in-Office on the Conflict Dealt with by the OSCE Minsk Conference’ assists the Chairman-in-Office in achieving agreement on the cessation of the armed conflict and in creating conditions for the deployment of an OSCE peace-keeping operation that should follow such an agreement. His mandate includes monitoring the cease-fire and assisting the parties in implementing and developing confidence-building, humanitarian and other measures facilitating the peace process, in particular by encouraging direct contact. The Representative participates in the visits and meetings of the Minsk Group Co-Chairs with the leaderships. The negotiations stalled in 2011 and remain highly confidential, operating under acute

126. The joint EU-CoE program “Confidence Building Measures (CBMs) for the Transnistria region” has a budget of 2,700,000 Euros, financed at the level of 90% by the EU, from January 2014 to December 2015 .

127. For example, the CoE undertakes a programme aimed at “addressing crises: Managing post-conflict situations”, notably for co-operation with the Transnistrian region of the Republic of Moldova. The overall objective of the “Confidence Building Measures across the river Nistru/Dniester” Programme is to establish a dialogue between different components of the population on both sides of the river Nistru/Dniester, namely professional groups, decision makers or pressure groups, and to increase awareness of European and international standards in the region. The civil society component aims to build bridges between civil society organisations across the river Nistru/Dniester by strengthening the capacity of small locally based NGOs, as well as fostering cooperation between NGOs and local public administrations (LPAs) in the social sphere. The Council of Europe will organise a series of capacity building activities for NGOs and LPAs from both banks on the participation of NGOs in the decision making process. See, ‘Council of Europe and Austrian Development Cooperation promote confidence across the river Nistru/Dniester in the media and civil society fields’, 12 December 2013, available at: http://www.coe.md/index.php?option=com_content&view=article&id=382%3Acoe-adc-conf&catid=40%3Apress-releases-&Itemid=55&lang=en.

128. *Council of Europe Progress Review Report 2012*, Directorate General of Administration, CM/Inf(2013)4 rev, 10 April 2013, available at: <https://wcd.coe.int/ViewDoc.jsp?id=2042247&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383>.

129. The Minsk Process is composed of: (a) the Minsk Group, created in 1992 to encourage a peaceful, negotiated resolution to the conflict between Azerbaijan and Nagorno-Karabakh Republic supported by Armenia. It is co-chaired by the US, Russia and France, and includes the following participating states: Belarus, Germany, Italy, Portugal, the Netherlands, Sweden, Finland, Turkey as well as Armenia and Azerbaijan; (b) the High-Level Planning Group (HLPG); and (c) the Personal Representative and his Office.

tensions between Armenia and Azerbaijan and lack of trust of the Azerbaijan side in the Minsk process.

The OSCE is also part of the 5+2 negotiation process. The talks include Moldova and Transnistria as parties to the conflict, the Russian Federation, Ukraine and the OSCE as mediators, and the United States and the European Union as observers. They aim at a “final, comprehensive and durable” settlement of the Transnistrian conflict. The Special Representative of the OSCE Chairperson-in-Office for the Transnistrian Settlement Process Ambassador conducts visits to Chisinau and Tiraspol.

The OSCE, through its Special Representative for the South Caucasus, is a co-Chair of the international Geneva Discussions on the 2008 conflict in Georgia, together with the UN and EU. Together with the European Union Monitoring Mission (EUMM), it also co-facilitates the meetings of the Dvani/Ergneti Incident Prevention and Response Mechanism (IPRM),¹³⁰ which addresses matters that affect the daily life of populations on the ground. The OSCE Parliamentary Assembly also has a Special Representative on South Caucasus whose mandate covers the promotion of dialogue in all segments of society in order to encourage reconciliation and rehabilitation with regard to “protracted conflicts” in the region and confidence-building measures, in cooperation with other OSCE institutions.¹³¹

The long duration of negotiations and their limited transparency and impact on the ground, means that the OSCE’s role as a broker of negotiations is often viewed by national and local civil society¹³² as limited and too dependent on the political goodwill of participating States, especially Russia. Nevertheless, the OSCE’s intent to play a role in the settlement of these conflicts is illustrated by the existence of a Special Representative of the OSCE Chairperson-in-Office for the Protracted Conflicts.

2.2.2. Field Missions, ODIHR and other institutions

Beyond participation in peace talks, the OSCE’s main tool for promoting human dimension commitments among participating States is the Office for Democratic Institutions and Human Rights (ODIHR).¹³³ The ODIHR does not have a specific program of work in the disputed entities and its work is more thematic than geographical. The ODIHR can engage in capacity-building to help Participating States comply with their Helsinki commitments (e.g. support to National Human Rights Institutions) and help those civil society sectors advocating in the same direction.

The OSCE’s efficiency is limited by the fact that it depends on the consensus of the 57 participating States. Field Missions are created upon invitation by host countries and their mandate is

130. The Incident Prevention and Response Mechanism was created in February 2009 as a result of the Geneva Discussions that followed the 2008 conflict in Georgia. The meetings are an opportunity to discuss, among other issues: the identification of potential risks, the follow-up of incidents and the exchange of information, as well as problems affecting the communities on a daily basis. The meetings are co-facilitated by the OSCE and the European Union Monitoring Mission in Georgia (EUMM). For further see: <http://www.osce.org/home/104212>.

131. OSCE Parliamentary Assembly web site, Special Representative on South Caucasus, <http://www.oscepa.org/about-oscepa/special-representatives/1224-special-representative-on-south-caucasus>.

132. As expressed during the Seminar discussions.

133. The ODIHR provides support, assistance and expertise to participating States and civil society to promote democracy, rule of law, human rights and tolerance and non-discrimination. The ODIHR observes elections, reviews legislation and advises governments on how to develop and sustain democratic institutions. The Office conducts training programmes for government and law-enforcement officials and non-governmental organizations on how to uphold, promote and monitor human rights. For further see the ODIHR website: <http://www.osce.org/odihr>.

agreed on a consensus basis by OSCE participating States, including Russia. The mandate of the OSCE Mission to Georgia encompassed monitoring and supporting the protection of human rights and fundamental freedoms in Georgia, including in South Ossetia and Abkhazia,¹³⁴ and promoting the building of civil society and democratic institutions. However, that Mission was terminated after Russia refused to renew its mandate following the 2008 war. Russia's influence is also visible in the recent downgrading of the OSCE Office in Baku to a Project Co-ordinator,¹³⁵ whose mandate does not cover Nagorno-Karabakh.

On the other hand, in Moldova the OSCE can operate through a Mission whose mandate also covers work on Transnistria, notably concerning negotiations, advice on the observance of human rights obligations and contact between the parties. The OSCE Mission works with the two sides to the dispute to build confidence between the people that live on both sides of the Dniester/Nistru river. The Mission also participates as an observer to the Joint Control Commission – the supervisory body for the Joint Peacekeeping Forces composed of delegations from the Russian Federation, Moldova and Transnistria, with Ukraine acting as an additional observer. The Mission also has an Office in Tiraspol. Although access to Transnistria is easier than to other disputed territories, it cannot be guaranteed. Rising tensions surrounding the monitoring of the situation of Latin-script Moldovan schools in Transnistria have, for example, led to attempts by Tiraspol to limit this access.¹³⁶

In response to the acute crisis gripping the country, the operations of the OSCE Project Coordinator in Ukraine have been complemented by an OSCE Special Monitoring Mission to Ukraine. This mission consists of civilian monitors operating in teams 24 hours a day/seven days a week, as necessary. In theory, the mission covers the whole territory of Ukraine, including the East of the country and Crimea.¹³⁷ In reality however the Mission cannot operate in Crimea,¹³⁸ though an OSCE Human Rights Assessment Mission composed of 19 experts was able to access Crimea in the beginning of March 2014, just before the entity declared its independence and was annexed by Russia.¹³⁹ The OSCE has also led an Election Observation Mission for the 25 May 2014 Presidential elections together with the EU, the Council of

134. A strong focus of the Mission was on stabilisation and easing of the humanitarian crisis, notably through the Incident Prevention and Response Mechanism (IPRM). In relation to Abkhazia, the Mission was tasked to support the UN-led efforts, and seconded a human rights officer to the UN Human Rights Office Abkhazia, Georgia (HROAG). For further see the website of the OSCE Mission to Georgia: <http://www.osce.org/georgia-closed/43383>.

135. OSCE Permanent Council, OSCE Project Co-ordinator in Baku, 963rd Plenary Meeting, PC Journal No. 963, Agenda item 3, Decision No. 1092, available at: <http://www.osce.org/pc/104784?download=true>.

136. 'Chisinau concerned with Tiraspol's actions to limit the OSCE Mission access to Transnistria', 24 January 2014, Teleradio-Moldova, available at: <http://trm.md/en/politic/chisinaul-ingrijorat-de-actiunile-tiraspolului-de-limitare-a-accesului-misiunii-osce>.

137. The mandate indicates that "The Special Monitoring Mission members will have safe and secure access throughout Ukraine to fulfil their mandate" and that "Monitors will initially be deployed to Kherson, Odessa, Lviv, Ivano-Frankivsk, Kharkiv, Donetsk, Dnepropetrovsk, Chernivtsi, Luhansk". See, OSCE Permanent Council, Deployment of an OSCE Special Monitoring Mission to Ukraine, 991st Plenary Meeting, PC Journal No. 991, Agenda item 1, Decisions No. 1117, PC.DEC/1117, 21 March 2014, available at: <http://www.osce.org/pc/116747?download=true>.

138. In its interpretative Statement to the Decision, Russia stated: "In joining the consensus regarding the draft decision of the Permanent Council on the deployment of an OSCE Special Monitoring Mission to Ukraine, the Russian Federation proceeds from the assumption that the geographical area of deployment and activities of the mission in question is strictly limited by the parameters of the mandate as adopted today, which reflects the political and legal realities existing since 21 March 2014 as a result of the fact that the Republic of Crimea and Sevastopol have become an integral part of the Russian Federation." See, OSCE Permanent Council, Russian Interpretative Statement under Paragraph IV.1(A)6 of the Rule of Procedure of the OSCE, PC.DEC/1117, 21 March 2014, available at: <http://www.osce.org/pc/116747?download=true>; and OSCE ODIHR/HCNM, *Human Rights Assessment Mission in Ukraine - Human Rights and Minority Rights Situation*, ODIHR HRAM: 6 March –1 April 2014/HCNM HRAM: 8 March –17 April 2014, 12 May 2014, available at: <http://www.osce.org/odihr/118476?download=true>.

139. OSCE/ODIHR and HCNM release report by Human Rights Assessment Mission in Ukraine, 12 May 2014, OSCE Press Release, available at: <http://www.osce.org/odihr/118454>.

Europe and NATO. However, these elections did not take place in Crimea, nor in large parts of Luhansk and Donetsk oblasts, due to systematic disruption by armed separatist groups.¹⁴⁰ Between 20 March and 30 April 2014, the OSCE also deployed a team of 15 international experts to Ukraine as part of a National Dialogue project to identify areas for further OSCE activities to support confidence-building between different parts of Ukrainian society.¹⁴¹

The OSCE has also mobilised specialised monitoring instruments like the High Commissioner on National Minorities (HCNM) and the Representative on Freedom of the Media. The HCNM is presented as “an instrument of conflict prevention at the earliest possible stage”,¹⁴² acting in confidence and independently of all parties concerned to de-escalate tensions involving national minorities. The HCNM is for example particularly involved in issues around the Moldovan-administered Latin-Script Schools in Transnistria. In its November 2013 visit to Moldova, including Gagauzia and Transnistria, the HCNM met with the *de facto* authorities in Tiraspol and urged them to refrain from taking any measures that could negatively affect the situation of the schools.¹⁴³

The OSCE Representative on Freedom of the Media plays a similar early warning role. Concerning the events in Ukraine, Ms. Mijatović has expressed concern about the influence of Russian television on information security; on the actions consequently led to suspend or ban all or some programmes produced in Russia; and about similar measures taken by the *de facto* authorities in Crimea concerning Ukrainian television channels.

2.3. European Union (EU)

The European Union can combine various political, financial and technical instruments in an attempt to influence the situation in disputed territories. At the highest diplomatic levels, EU action can seek to contribute to peace settlement. At lower levels, the EU also aims to create conditions for peace through aid, confidence-building and other measures.

2.3.1. Striving for peace: high-level diplomacy, negotiations, mediation

Georgia/South Ossetia/Abkhazia

Under the Presidency of France the EU played a major role in brokering a ceasefire after the August 2008 war. It has further sought to build on these efforts in a bid to stabilise and normalise the post-conflict situation in Georgia, though has been confronted with several challenges.

140. International Election Observation Mission, Ukraine — Early Presidential Election, 25 May 2014, Statement of Preliminary Findings and Conclusions, 26 May 2014, available at: <http://www.osce.org/odihr/elections/ukraine/119078?download=true>.

141. For a summary of the OSCE activities with regards to the Ukraine crisis, see: ‘OSCE response to the crisis in Ukraine As of 29 May 2014’, OSCE, available at: <http://www.osce.org/home/116940?download=true>.

142. See the High Commissioner for National Minorities Mandate, at: <http://www.osce.org/hcnm/107878>.

143. The HCNM has also been active in the Crimean crisis. After her visits to Ukraine, including Crimea, in March and April 2014, the HCNM urged Ukraine to revise its legislation on national minority rights and expressed concern about the situation of non-Russian speakers in Crimea, notably Crimean Tatars. In her Statements, the HCNM highlighted that the authorities in effective control of Crimea remained responsible for human rights, including minority rights, of all persons residing on the peninsula: “The people in Crimea, in particular the Crimean Tatars and the Ukrainian community, are in a precarious position. I urge the authorities in effective control to refrain from actions that exclude people from employment in the public and private sectors or force them to give up their property.” Statement by the OSCE High Commissioner on National Minorities on her recent visits to Ukraine, 4 April 2014, available at: <http://www.osce.org/hcnm/117175>.



EEUM mission at the South Ossetia border. – Credit AFP PHOTO / VANO SHLAMOV

The EU has been most successful in the areas of truth-seeking, dialogue with the authorities and confidence-building. Thus, the need to act rapidly to investigate the origins and cause of the conflict for international law purposes saw the EU's 2008 appointment of the Tagliavini Independent International Fact-Finding Mission. The regional bloc has also managed to encourage greater engagement by the Georgian authorities. After its 2009 adoption of a 'Non Recognition and Engagement Policy',¹⁴⁴ the EU encouraged Georgia to take a more flexible approach to its post-war disputed territories.

The EU has also played a key role in Geneva International Discussions, notably by co-moderating the Working Group on humanitarian affairs with the UNHCR. Nevertheless, these talks are limited to security and humanitarian issues, making them a conflict management rather than conflict settlement process.

144. According to the then EU Special Representative for the South Caucasus, Peter Semneby (2011), the purpose of the policy, clearly announced in its title, is that "by engaging the entities, the EU can open up these territories, increase its footprint and leverage, provide an alternative perspective to the predominant Russian one, and, ultimately, move closer towards a resolution of the conflicts". See, Presentation by the EU Special Representative for the South Caucasus, Peter Semneby, to the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe of the Parliamentary Assembly of the Council of Europe. Hearing on "the consequences of the war between Georgia and Russia" National Assembly, Paris, 17 January 2011, available at: <http://www.consilium.europa.eu/media/1252985/speech-page%20mc-paris-110117-final.pdf>.

On the ground, the EU has co-chaired the Incident Prevention and Response Mechanism (IPRM) together with the OSCE and the UN. The IPRM was established to allow a channel of contact with local stakeholders to investigate incidents, respond to criminal activities, and ensure effective delivery of humanitarian aid, amongst other things. It is the only formalised Forum in which the EU, Georgia and South Ossetia can expressly discuss human rights issues, though such issues are limited to those of a non-conflictual nature (children's access to schools or border crossings for medical reasons) – more political human rights matters cannot be raised. At present, the IPRM for Abkhazia is unfortunately blocked, as the *de facto* authorities consider the EU to be pro-Georgian.

Azerbaijan/Nagorno-Karabakh

The EU has been much less involved concerning Nagorno-Karabakh. It has reduced leverage in respect of this entity as Azerbaijan does not seek EU integration, unlike other countries with disputed territories, like Georgia or Moldova. While for these countries the EU is undoubtedly on the side of the 'legal' state, its position is more nuanced regarding Nagorno-Karabakh. Azerbaijan therefore considers greater EU involvement on Nagorno-Karabakh a potential threat.

The EU has not played any significant role in negotiations on Nagorno-Karabakh, though several EU Member States are part of the OSCE Minsk Group, which has until now refused to cede its place to the EU. While the EU Special Representative (EUSR) for South Caucasus' mandate includes efforts to broker peace in Nagorno-Karabakh, in practice Azerbaijan's objection has resulted in all EU special envoys staying out of the disputed entity. The EUSR therefore concentrates on visibility, messaging promoting self-restraint and escalation avoidance, and engagement on non-political and pragmatic issues.

Moldova/Transnistria

Whilst the EU has no definitive 'Non Recognition and Engagement' policy for Georgia, solving the Transnistrian conflict is high on its political dialogue agenda with Moldova. The EU-Moldova European Neighbourhood Policy (ENP) Action Plan includes a full section regulating 'Co-operation for the settlement of the Transnistria conflict'. This section is more developed than mere references to disputed territories in the other countries' Action Plans. The EU has invited the Moldovan authorities to pro-actively engage with the Transnistrian side to promote an attractive, mutually acceptable vision for a common future, and accordingly agree the basic parameters for a settlement.

Notably, the EU seems ready to use the full range of carrots and sticks available through its diplomatic instruments in respect of Transnistria. Transnistrian leaders are the only disputed entity representatives to have been targeted by visa bans. Meanwhile, between 2005 and 2010 the EUSR for Moldova (mandated to strengthen the EU's efforts to resolve the Transnistria conflict and maintain close contact with relevant actors) allowed the EU to intensify its contact with Transnistria. Today the EU delegation in Moldova continues to engage with Transnistria on a regular basis, though human resource constraints mean that this engagement is not as intensive as that of the EUSR and his staff.

In addition, the EU together with the USA is an observer in the 5+2 talks, with the five main negotiators being Russia, Moldova, Transnistria, Ukraine, and the OSCE. Unlike other negotia-

tions, the agenda of 5+2 talks encompass three sets of issue that allow for clearer visibility on human rights: socio-economic problems, humanitarian issues and human rights, and comprehensive settlement (including institutional, political and security issues).

2.3.2. Aiming at conditions for peace: aid, confidence-building, monitoring

EU aid can take several forms. These include confidence-building measures, humanitarian aid, and limited support to local civil societies. In Georgia, the EU has made support for the peaceful settlement of the country's internal conflicts one of its four priorities for aid to Georgia. This aid is focussed on post-conflict rehabilitation, including support for internally displaced persons and economic stability. Until 2008, the EU was the largest donor in Abkhazia and South Ossetia. However, due to political preconditions set by the *de facto* authorities, the EU no longer has projects in South Ossetia. Today, it remains the largest donor in Abkhazia, together with the Swedish cooperation agency SIDA. It focuses on support projects to local populations in Abkhazia, on confidence-building, education, health and livelihoods/basic infrastructure, and/or housing rehabilitation.

The EU has sought to support confidence-building through projects like the Confidence Building Early Response Mechanism (COBERM). It has also proposed a few projects touching on human rights in the disputed territories, under the European Instrument for Democracy and Human Rights (EIDHR) and the Instrument for Stability (IfS), though these projects have remained very specific in subject and scope.¹⁴⁵

Generally speaking, the EU has been confronted with the connected challenges of difficulty accessing both the disputed entities and the *de facto* authorities, as well as information on human rights developments there. Since Russia forced the OSCE's departure from South Ossetia and the UN's withdrawal from Abkhazia in 2009, these situations have not been subject to international monitoring. The EU Delegation has secured bilateral contact in Abkhazia, though not in South Ossetia. Nevertheless, this contact is not adequate to enable it to properly monitor the situation there. The UNDP and the UNHCR have greater means to assess the situation in the country but information is not public. The EUSR for South Caucasus¹⁴⁶ regularly goes to South Ossetia as co-Chair of the Geneva negotiations (not in the capacity of EUSR *per se*). Under the "stabilisation, normalisation and confidence-building" component of the EU Monitoring Mission (EUMM) mandate, stabilisation is deemed to include human rights and international humanitarian law violation monitoring. However, Abkhaz and South-Ossetian authorities have denied the EUMM access to the territories under their control.

145. The EU supported a Special Coordination Centre for Law Enforcement Bodies of the Sides (SCC) bringing together Georgian and South Ossetian law enforcement agencies between 2001 and 2003. Another example is the project "Promoting the rights and social and economical integration of South Ossetian women IDPs", and a 2009-2010 project on the "Promotion of implementation of the international standards in the sphere of protection of human rights and access to fair justice in Abkhazia" (notably, the title may be more ambitious than the reality of this latter modest project (12 months, only 50 000 Euros) focusing on the provision of free legal advice to socially vulnerable groups, as well as conducting legal and educational activity in the field of human rights).

146. The mandate of the EU Special Representative for the conflict in Georgia, later merged with the EUSR for South Caucasus, is to develop contacts in the region, contribute to the peaceful settlement of conflicts, encourage confidence-building measures, and assist in possible conflict settlement. The part of the mandate covering human rights was reduced in post-Lisbon revisions to the mandate.

In EU rehabilitation and human rights-related aid to Azerbaijan is less than that to Georgia. Nevertheless, the Union does support a confidence-building project, the ‘European Partnership for Peaceful Settlement of the conflict over Nagorno-Karabakh’ (EPNK), which undertakes research, analysis, training, capacity building and other activities through contact with various actors, including from within Nagorno-Karabakh.

Transnistria is a good example of the EU approach to creating conditions for peace. The EU Border Assistance Mission (EUBAM, 2005) was instrumental in combating smuggling and trafficking, thus raising the cost of Transnistria’s *de facto* independence. This was complemented by EU support to civil society and Confidence-Building Measures (CBMs) in Transnistria. As it is essential that the EU advance on finalising the Association Agreement with Moldova, the European Commission has indicated its will to continue working with the Transnistrian *de facto* authorities. This work is intended to enable these authorities to consider the “substantial benefits the region can gain” in terms of social progress, improvement in human rights and economic modernisation if they participate in the future agreement with Moldova. The framework for EU development cooperation with Moldova, the National Indicative Plan, also encourages Moldovan stakeholders to channel part of European Commission assistance to their Transnistrian counterparts.¹⁴⁷

Overall, the EU approach in countries with disputed territories varies in intensity, but is characterised by the privileging of contacts with *de jure* authorities and working on conditions required for peace rather than on the conflict itself. The EU wagers that working on the transformation of the legal State, for example Georgia, will make that state more attractive to the disputed entities, opening up the prospect of future reintegration. In parallel, the EU’s engagement within the disputed entities and with the *de facto* authorities is limited and as depoliticised as possible.

The approach of privileging reform of the *de jure* State is too long-term to really affect the lives of individuals in disputed entities. In addition, rehabilitation projects that can influence disputed entities aim to obtain a gradual opening of the break-away regions first, consequently pushing back projects considered more political, like structural human rights projects, to later.

2.4. United Nations

Of the numerous mechanisms developed by the United Nations, Seminar discussions mostly focussed on individuals’ access to treaty bodies and special procedures to the disputed entities. Mechanisms like the Universal Periodic Review (UPR)¹⁴⁸ were not evoked here, as this whilst

147. Projects on Moldova sometimes cover Transnistria (e.g. “Strengthening legal protection from and raising awareness of Discriminatory ill-treatment in the Republic of Moldova, including Transnistria” – with Promo-Lex; “Building bridges between NGOs, business associations and media from Moldova, Ukraine and Russia for conflict prevention in Transnistria”). However support to civil society is complicated by restrictions on access to international funds for Transnistrian NGOs. The EU supports Transnistrian NGOs being consulted along with Moldovan NGOs in relation to the programming of EU assistance regarding the European Instrument for Democracy and Human Rights (EIDHR) and Non State Actors and Local Authorities (NSA-LA) Programmes.

148. The UPR is a State-driven process, under the auspices of the Human Rights Council, which allows for peer review of the human rights records of all UN Member States. The UPR takes place at the Human Rights Council with submissions of governments and civil society organisations and special rapporteurs. *De facto* entities do not participate and recommendations are addressed by States members of the HRC solely to the *de jure* authorities. Therefore, although the human rights situation in disputed entities can be addressed, the UPR does not allow for creative solutions.

such forums have sometimes allowed for discussion on the situation in disputed entities, such discussions have been highly politicised.¹⁴⁹

Human Rights treaty bodies

The UN has ten human rights treaty bodies. These are committees composed of independent experts who monitor the implementation of core international human rights treaties. Each State party to a treaty is obliged to take steps to ensure that everyone on its territory can enjoy the rights set out in the treaty.¹⁵⁰ Nine treaty bodies may, ¹⁵¹ under certain conditions, consider complaints or communications from individuals. However, the actual ability of UN treaty bodies to offer redress in respect of individual complaints concerning disputed territories is virtually non-existent at present. Thus, whilst the Human Rights Committee has jurisdiction to examine individual complaints lodged against States party to the International Covenant on Civil and Political Rights (ICCPR), no complaint has so far concerned a human rights situation in a disputed entity.

Treaty bodies also monitor States' compliance with their treaty commitments. Under Article 40 ICCPR, States Parties undertake to "submit reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights". In making recommendations to State parties under scrutiny, the Human Rights Committee can evoke the situation in disputed entities. For example in 2009, the Committee stressed that despite Moldova's claims that its inability to exercise effective control over Transnistrian territory impedes the implementation of the ICCPR in this region, it has a "continuing obligation to ensure respect for the rights recognised in the Covenant in relation to the population of Transnistria within the limits of its effective power"¹⁵². As such, the Committee recommended that Moldova renew its efforts to resolve impediments to the implementation of the Covenant in Transnistria and provide information on the steps taken in this regard in its next report. Comparable recommendations were also addressed to Georgia¹⁵³ and Azerbaijan.¹⁵⁴

The UN Committee Against Torture (CAT) similarly indicated that, whilst taking into consideration the fact that Abkhazia and South Ossetia are self-proclaimed autonomous republics,

149. For example during the 2010 UPR for Georgia, Georgia and Russia opposed each other through points of procedure on territorial questions and their consequences in terms of human rights responsibilities. Russia argued that South Ossetia and Abkhazia were independent and that Georgia could not therefore address the human rights situation there. Georgia, by contrast, argued that these territories were under Russian occupation and authority and therefore Russian responsibility. Both accused each other of 'politicising' the UPR process and the Working Group on the Universal Periodic Review could only express that it was not the competent body to discuss issues of a political or territorial nature.

150. See the UN OHCHR Treaty bodies page at <http://www.ohchr.org/EN/HRBodies/Pages/TreatyBodies.aspx>.

151. CCPR, CERD, CAT, CEDAW, CRPD, CED, CMW, CESC and CRC.

152. Consideration or reports submitted by State Parties under article 40 of the Covenant, Concluding observations of the Human Rights Committee - Moldova, Ninety-seventh session, 12-30 October 2009, CCPR/C/MDA/CO/24, available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPrICAqhKb7yhspQgftv24miQXmsibWTDK%2fLwx6yb32GyXulZx8JuxGYBTKDIRGpFVQ%2f1KwEqKqW12aKu%2f70%2f1y%2b%2fTkfdmk5DjrvLJmFnoYdj07kgDkrpVAI>.

153. Consideration or reports submitted by State Parties under article 40 of the Covenant, Concluding observations of the Human Rights Committee - Georgia, Ninety-first session, 2 November 2007, CCPR/C/GEO/CO/3, available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPrICAqhKb7yhstNBq%2bgKf4e%2fR1Jt%2fY5ToY%2b3PHTzRmbinp%2bNrTjFQW2%2bYL4D1M767a02pC7ip63%2bL15HYli1%2bJxgaahJya27fn9pCR3GgABNGN7cHlj6jEKD>

154. Consideration or reports submitted by State Parties under article 40 of the Covenant, Concluding observations of the Human Rights Committee - Azerbaijan, Ninety-sixth session, 13 – 31 July 2009, CCPR/C/AZE/CO/3, 13 August 2009, available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPrICAqhKb7yhshv33kpjN1yQcFINQGeFnoIFyseCy%2bAmqbwWcUcDsiYzb9oFIQ16%2b1xFFHnognbXBCJm9cWXP9EIoiEw8MX1la5Unjkve2VGN6hOaiNg95%2b>.

the Committee wished to “remind the State party that no exceptional circumstances may be invoked in respect of the absolute prohibition of torture”.¹⁵⁵ By contrast, the UN Committee on the Elimination of Racial Discrimination (CERD) generally simply expresses regret about the impossibility of implementing and supervising implementation in disputed entities, without referring to the ultimate responsibility of the *de jure* authorities in that regard.¹⁵⁶

Special Procedures and the UN High Commissioner for Human Rights

The special procedures of the Human Rights Council are independent human rights experts with mandates to report and advise on human rights from a thematic or country-specific perspective. They do so through, *inter alia*, country visits,¹⁵⁷ which can once again raise the question of access. While 85% of 193 UN Member States have accepted requests for country visits, access to disputed territories varies from case to case.

The mandates for some special procedures are particularly relevant to the types of rights violated in the context of disputed territories conflicts. The UN Special Rapporteur on the human rights of internally displaced persons for example has regularly visited Georgia (2000, 2006, 2008, 2009, 2010, 2013) and Azerbaijan (1997, 2007, 2010, 2014) in the recent years. These visits included the provision of support to initiatives to improve legislative amendments on internally displaced persons, for example in Georgia.

On his 2010 visit, the UNSR was provided with access to Abkhazia. While most recommendations were addressed to the Tbilisi authorities – notably on the need for the ‘Law on the Occupied Territories’ not to impede humanitarian access or the return of displaced persons – the UNSR also urged the *de facto* authorities to create conditions for sustainable returns.¹⁵⁸

Subsequent visits to Georgia by UN Special procedures¹⁵⁹ have not allowed for visits of Abkhazia or South Ossetia, including for the June 2013 follow-up visit by the UNSR on the human rights of internally displaced persons.¹⁶⁰ After her May 2014 visit to Georgia, UN High Commissioner for Human Rights, Ms. Navi Pillay, expressed her regret that “in spite of repeated efforts and the urging of the UN Secretary-General, my Office has consistently

155. Consideration of reports submitted by States Parties under Article 19 of the Convention, Conclusions and recommendations of the Committee against Torture - Georgia, Thirty-sixth session, 1-19 May 2006, CAT/C/GEO/CO/3, 25 July 2006, available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsqbBZ6870iKEmC%2b7Xz7mR2kKzWjWJXX0sXq5ROPwT0yhPVj9VrePDgEEnYWh eVcqeO%2fKlIG0KH42iEsCK8%2fQYgJ%2bifwWjqSATxqEb%2b8>.

156. See, for example, UN Committee on the Elimination of Racial Discrimination, Consideration of reports submitted by States parties under article 9 of the Convention - Georgia, Seventy-ninth session, 8 August–2 September 2011, CERD/C/GEO/CO/4-5, 20 September 2011, available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhs uh9J2cqmL1NA4hM%2b%2fajGw54%2bxFevWWyPz0qSisxarboe3oWCIRh5wnJv SsxxeBSap9Njt98mJkhBEZ%2bRKHUVEHanZxFLn28t2dZ9g%2fUdJ>.

157. Other modalities of action include action on individual cases and concerns of a broader, structural nature by sending communications to States and others in which they bring alleged violations or abuses to their attention; conducting thematic studies and convening of expert consultations; contribution to the development of international human rights standards; engaging in advocacy; raising public awareness; and providing advice for technical cooperation.

158. Report of the Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kälin, Addendum, Follow-up mission to Georgia, Human Rights Council, A/HRC/16/43/Add.3 23, December 2010, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/179/12/PDF/G1017912.pdf?OpenElement>.

159. Including the UN Working Group on Arbitrary Detention (2011), UNSR on the rights to freedom of peaceful assembly and of association (2012).

160. The UNSR “regretted that he was unable to visit Abkhazia and the Tskhinvali region/South Ossetia”. See, ‘UN expert welcomes new opportunities for internally displaced persons in Georgia’, 17 June 2013, OHCHR Press Release, available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13461&LangID=E>.

been denied access to Abkhazia and South Ossetia”.¹⁶¹ Stressing that the situation affecting people displaced from and living within Abkhazia and South Ossetia was “both alarming and depressing”, Ms. Pillay expressed her regret that “South Ossetia has become one of the most inaccessible places on earth, with no access permitted for international agencies, except the ICRC” and that “this isolation has been growing in recent months”.

Difficulties in accessing Nagorno-Karabakh and Crimea are comparable. UN Special Procedure visits to Azerbaijan are relatively rare and do not include visits to Nagorno-Karabakh.¹⁶² Ivan Šimonović, Assistant Secretary-General for Human Rights, was for example denied entry to Crimea in early March 2014.¹⁶³ The UNSR on Minority Issues was also refused access in April 2014 but undertook interviews with minority representatives outside of Crimea.¹⁶⁴

UN Special Procedures have much easier readier access to Transnistria, as illustrated by the visits to Moldova of the Working Group on discrimination against women in law and in practice (2012) and the Special Rapporteur on extreme poverty and human rights (2013). These missions have included visits to Transnistria and contact with institutions and communities on both banks of the Dniestr/Nistru River.

Possibilities for creative solutions

There are possibilities for concrete and creative cooperation on human rights between UN mechanisms and *de jure* and *de facto* authorities. These may represent a middle way between the work of special procedures and treaty bodies.

Thus, for example, in February 2013 the UN published its first report devoted specifically to the human rights situation in Transnistria.¹⁶⁵ This report¹⁶⁶ followed three visits to the disputed entity by UN independent senior expert and former Council of Europe Commissioner for Human Rights, Mr. Thomas Hammarberg. In 2011 High Commissioner Navi Pillay had also visited Transnistria as part of her visit to Moldova,¹⁶⁷ holding meetings with the *de facto*

161. She continued: “I myself have made efforts to visit, but once again access was denied. My visit yesterday to an IDP settlement, and to the Administrative Boundary Line with South Ossetia, has confirmed my view that more attention needs to be paid to the situation of human rights in South Ossetia and Abkhazia”. See, ‘Pillay praises Georgia’s plan to introduce comprehensive human rights reforms Opening remarks by UN High Commissioner for Human Rights Navi Pillay at a press conference in Tbilisi, Georgia’, 21 May 2014, OHCHR Press Release, available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14624&LangID=E>.

162. See the latest visits of SR on IDPs (2014), SR on violence against women (2013), SR on health (2012)

163. ‘Senior UN human rights official visits Ukraine’, 7 March 2014, OHCHR Press Release, available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14332&LangID=E>.

164. ‘Statement of the Special Rapporteur on minority issues, Rita Izsák, following her official visit to Ukraine – 7 to 14 April 2014’, 16 April 2014, OHCHR Press Release, available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14518&LangID=E>.

165. Report on Human Rights in the Transnistrian Region of the Republic of Moldova, Thomas Hammarberg, 14 February 2013, available at: <http://www.un.md/publicdocget/41/>.

166. UN Senior Expert Thomas Hammarberg, Report on Human Rights in the Transnistrian Region of the Republic of Moldova, 14 February 2013, <http://www.un.md/publicdocget/41/>

167. UN High Commissioner for Human Rights Navi Pillay Press Conference at the conclusion of her mission to the Republic of Moldova, 4 November 2011, available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11569&LangID=E>. Pillay also stated: “My general mandate under United Nations General Assembly Resolution 48/141 is about protection of all human rights for all. I therefore need to have access to and work with all those who are in effective control of a territory in order to reach out to people in need, because protecting human rights – especially for the most vulnerable – is my priority. I would like to point out that my office’s work with *de facto* authorities on human rights issues does not amount to their legitimisation. My presence in Tiraspol reiterates the responsibility, if not the obligation, of the *de facto* authorities to respect human rights and the need for them to cooperate with all relevant international and regional human rights mechanisms.”

authorities and indicating that the overall spirit was that “technical human rights experts [...] truly benefit[s] people on the ground”.

The Hammarberg report builds on the fact that Transnistria has unilaterally pledged to respect some of the key international treaties, including the two UN human rights Covenants, the European Convention on Human Rights and the Convention on the Rights of the Child. Identifying that not all legislation was fully consistent with these instruments, Mr. Hammarberg recommended a review of Transnistria’s ordinary legislation to address inconsistent aspects. Welcoming the full cooperation of the *de facto* authorities and the access given to Mr. Hammarberg to the Transnistrian region, the High Commissioner called on the *de facto* authorities “to address the deeply rooted problems identified in the report and to fully implement its recommendations, including the development of a plan of action for human rights”.¹⁶⁸

In her April 2014 visit to Moldova (including Transnistria), UN Deputy High Commissioner for Human Rights, Ms. Flavia Pansieri, was able to follow-up on the Hammarberg report’s recommendations. She welcomed the adoption of a plan of action by the *de facto* authorities for the implementation of these recommendations and encouraged follow-up in a holistic manner.¹⁶⁹

Creative solutions to difficult human rights situations such as that outlined here (e.g. a unilateral human rights pledge) show that disputed territories need not be inevitable human rights vacuums. Such solutions should be utilised in respect of all disputed entities, and all international organisations should collaborate in pursuance of such an approach.

2.5. The International Criminal Court

The International Criminal Court (ICC) is the world’s first permanent, treaty-based international criminal court. It was established by the Rome Statute on 17 July 1998, which entered into force on 1 July 2002 and currently has 122 State Parties. The ICC tries persons accused of the most serious crimes of international concern, namely genocide, crimes against humanity and war crimes. The ICC has announced preliminary examinations on the situations in South Ossetia (to cover the 2008 Russia-Georgia war) and Ukraine (to cover the limited period of the Maidan events). FIDH and local civil society groups have called upon the Ukrainian authorities to accept ICC jurisdiction over crimes committed in Crimea that reached their peak in March 2014, as well as other crimes committed in Eastern Ukraine.

South Ossetia

Georgia deposited its instrument of ratification to the Rome Statute on 5 September 2003. This gives the ICC jurisdiction over crimes committed on the territory of Georgia or by its nationals from 1 December 2003 onwards. The Office of the Prosecutor (OTP) at the ICC announced a preliminary examination of the situation in Georgia on 14 August 2008.

168. ‘Human rights do not have any borders: Pillay’, 14 February 2013, OHCHR Press Release, available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12991&LangID=E>.

169. She also encouraged renewed attention to fostering wider space for human rights civil society organisations on the left bank of the Nistru, as well as their close involvement in the implementation of Senior Expert Hammarberg’s recommendations. See, ‘Statement by the UN Deputy High Commissioner for Human Rights, Flavia Pansieri, at the end of her mission to the Republic of Moldova’, 11 April 2014, OHCHR Press Release, available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14498&LangID=E>.

A preliminary examination involves the OTP determining whether a situation meets the legal criteria established by the Rome Statute to warrant an investigation: jurisdiction, admissibility (complementarity and gravity) and the interests of justice. A preliminary examination of a situation by the OTP may be initiated on the basis of: a) information sent by individuals or groups, states, intergovernmental or non-governmental organisations;¹⁷⁰ b) a referral from a state Party or the Security Council; or (c) a declaration accepting the exercise of jurisdiction by the Court pursuant to article 12 (3) of the Rome Statute, lodged by a state that is not a party to the Statute.¹⁷¹

The preliminary examination launched by the OTP relates to skirmishes between South Ossetian forces and the Georgian army, which escalated into an armed conflict, rendered international by Russia's involvement.¹⁷² Alleged crimes include: forcible displacement of the Georgian population, attacks against peacekeepers, unlawful attacks directed against the civilian population and civilian objects, the destruction of property, pillage, and torture and other forms of ill-treatment.¹⁷³ A legal analysis of information by the OTP regarding the alleged crimes led to the conclusion that there is a reasonable basis to believe that, at a minimum war crimes under the jurisdiction of the court have been committed by South Ossetian forces. These are namely: torture, destruction of property and pillage.¹⁷⁴ There is also a reasonable basis to believe that at a minimum South Ossetian forces have committed crimes against humanity in the form of deportation or forcible transfer of the population.¹⁷⁵

Regarding admissibility, a situation must meet the requirements of both complementarity and gravity to be admissible before the court. The OTP has found that both Georgia and Russia are still conducting national investigations into the alleged crimes, meaning complementarity is still an issue, since the ICC has jurisdiction only where the state is unwilling or unable to carry out an investigation or prosecution.¹⁷⁶ In May 2013, the Office of the Chief Prosecutor of Georgia informed the OTP that the alleged criminal actions "are being investigated", with a focus on allegations of the alleged war crimes.¹⁷⁷ An eight member investigative team was set up, and the OTP was updated on 25 September 2013 about its functions, procedures and investigative steps implemented so far.¹⁷⁸ Georgian civil society, however, has expressed its concerns and doubts about the capacity of national prosecutors to conduct credible investigations and proceedings.

Regarding Russia, the Investigative Committee of the Russian Federation has noted obstacles in the course of their investigation, including an alleged lack of cooperation by the Georgian government and the diplomatic immunity enjoyed by foreign (i.e. Georgian) officials who might be subject to prosecutions.¹⁷⁹

170. Article 15 (2) Rome Statute of the International Criminal Court (1998).

171. International Criminal Court, Office of the Prosecutor, Report on Preliminary Examination Activities 2013, page 3, paragraph 1.

172. *Ibid* page 38, paragraph 156.

173. *Ibid* page 38, paragraphs 157-162.

174. *Ibid* page 39, paragraph 163.

175. *Ibid* page 39, paragraph 164.

176. Article 17 of the Rome Statute of the International Criminal Court (1998).

177. International Criminal Court, Office of the Prosecutor, Report on Preliminary Examination Activities 2013, page 40, paragraph 168.

178. *Ibid*.

179. *Ibid* paragraph 170.

Crimea

Ukraine is not a state party to the ICC. However, in April 2014, Ukraine lodged a declaration accepting the jurisdiction of the Court for crimes committed in the country between 21 November 2013 and 22 February 2014. Following this request, on 25 April 2014 the OTP announced a preliminary examination.

Ukraine's acceptance of jurisdiction therefore only covers crimes committed during the Maidan protests between 21 November 2013 and 22 February 2014. This means that there is the risk of an impunity gap, since the temporal limits of the declaration leave other very serious situations outside this jurisdiction, in particular events in Crimea, as well as Odessa and the Eastern regions of the country.¹⁸⁰

Ukraine therefore needs to extend the temporal limits of its jurisdiction if very serious crimes of international concern are to be adjudicated upon. Ukraine signed the Rome Statute in 2000. However, the Statute was ruled incompatible with the Ukrainian constitution in 2001, preventing ratification ever since. On 14 May 2014, 199 members of parliament proposed a draft amendment to the constitution to address this issue.¹⁸¹ It is hoped that this draft amendment will be fully supported to enable the new Ukrainian government to become a full member of the ICC.

According to Article 126 of the Rome Statute, "the Statute shall enter into force on the first day of the month after the 60th day following the deposit by [Ukraine] of its instrument of ratification, acceptance, approval or accession". Thus, for the purposes of crimes committed in the context of the disputed territories, even in the event of ratification, a temporal jurisdictional gap would remain between 23 February and the date of entry into force of the Rome Statute for Ukraine. As such, a declaration extending acceptance of the ICC's jurisdiction would still be needed to cover alleged crimes committed in Crimea.

180. 'Ukraine: New Government can End Impunity by Joining ICC', 9 July 2014, FIDH, available at <http://www.fidh.org/en/eastern-europe-central-asia/ukraine/15731-ukraine-new-government-can-end-impunity-by-joining-icc>

181. *Ibid.*

CONCLUSION AND RECOMMENDATIONS

Addressing the legal vacuum in practice

FIDH's 2014 Seminar sought to highlight the specific challenges faced by the 3.3 million people who live on a combined territory of 47.223 km² comprising the five disputed entities in Eastern Europe. Individuals in the disputed entities are confronted with multiple levels of rights violations. At one level, they suffer from violations typical of closed political systems: their freedom of association, expression, assembly, right to remedy and access to justice may be challenged. At a second level, they suffer from rights violations arising from a conflict situation that can affect their right to life, freedom of media and other rights. At a third level, certain rights are particularly affected by the reality of being the subject of a disputed entity: these can include freedom of movement, property rights, right to citizenship, right to health and education, amongst others. Certain sets of rights, like the right to access to justice, are affected by all three dynamics.

Individuals in disputed entities lack access to remedies. This creates a context best described as a legal vacuum. Here, whilst local mechanisms are either non-existent or ineffective, regional and international mechanisms are inaccessible. Those responsible for human rights violations are therefore left unaccountable, leaving disputed entities outwith the scope of international law – their populations isolated.

In terms of progressing human rights compliance, the situation in each disputed entity is unique. This idiosyncratic context can be determined by the level and nature of violations taking place, political commitments made by *de facto* authorities, and concrete opportunities to access the territory, as well as the openness of the authorities. While Transnistria has for example unilaterally committed to respect international human rights Covenants, and generally authorises international monitors to access and report on the entity, such a scenario is impossible in Nagorno-Karabakh.

These specific and yet composite situations call for an adapted and concerted response by the international community, in collaboration with the *de jure* and *de facto* authorities and civil society at all levels. The feeling that emerged from Seminar discussions was that until now the international community has somehow given up on the challenges of human rights protection in the disputed territories because of a lack of perspectives in lengthy negotiations around the conflicts. The apparent “frozen” nature of these conflicts appears to have fostered the notion that these situations are less urgent than open conflicts – even though they have been a source of considerable human rights violations for decades. The current geopolitical stakes and concerns about the risk of “thawing” a few of these conflicts seems to have instilled paralysis in the international community.

In this context of inaction, judicial (by the European Court for Human Rights) and quasi-judicial approaches (for example by the UN Human Rights Committee) have, in theory, offered some remedy for individuals in disputed territories. Refusing the possibility of a legal

vacuum, the ECtHR has generated some interesting case law to the effect that – depending on the circumstances – both the legal authorities and the authority exercising effective control can have responsibility for human rights in a disputed entity. However, the ECtHR cannot directly address the *de facto* authorities of a disputed entity not recognised by the majority of the international community, and implementation of ECtHR decisions are beyond its control.

Here, legal recourse offered by the ECtHR has to be complemented by political action through other institutions, be it the CoE, the OSCE, the UN or the EU. These International Governmental Organisations (IGOs) have at their disposal several modalities of action, including participation in peace negotiations, diplomatic contacts with *de jure* and (sometimes) *de facto* authorities, confidence-building programmes, monitoring of human rights developments, and support to the civil society and human rights activists, amongst other measures.

The impact of these IGOs on the ground largely depends on their access to a disputed entity, on the possibility and quality of dialogue with the *de facto* authorities, and ultimately, on the overall situation with regards to the settlement of the conflict. This does not mean IGOs are powerless in a disputed entity situation.

While the peaceful resolution of conflicts creating disputed entities is crucial, IGOs should not seek to address the challenges of disputed territories principally through conflict management approaches or lengthy peace settlement negotiations. They must coordinate a flexible and concrete approach aimed to impact directly on the daily human rights situation of the population in disputed territories. Reinforcing human rights protection in disputed territories requires political will among the various stakeholders involved. The international community must work on encouraging this political will through all possible incentives.

In addition, the international community should not hide behind the current absence of political will among the parties not to act. It must seek creative solutions around the challenges of how to practically compensate for both the legal and the (geo)political vacuums created in this context.

The international community has numerous instruments at its disposal, but their actual combination has had too limited an impact on concrete human rights enjoyment in disputed territories. Finding creative solutions may mean using existing instruments in a more efficient combination and at different level. The Hammarberg Report on Transnistria provides an example for all international organisations on how to seek concrete and creative cooperation with *de facto* authorities, starting with encouraging a unilateral commitment to respect international human rights standards. In addition, reinforcing the role and voice of civil society in disputed entities, both directly and indirectly, may aid to bridge the protection gap. In the absence of such efforts, the scope of impunity will enlarge as the space for civil society shrinks, ultimately hindering access to international legal mechanisms.

The international community cannot afford to let more than three million people wait for a political agreement to these frozen eastern European conflicts before their basic rights can be protected. This is particularly given that sustainable peace settlements seem increasingly remote in the current geopolitical context. The international community must take responsibility for addressing human rights concerns, which are also key to sustaining these conflicts. As long as the destiny of the people in these entities depends on *realpolitik*, the human rights vacuum will remain. On the other hand, securing human rights for these persons can, in the context of wider support for the development of independent civil society and democratic culture, serve to refocus approaches to disputed entities

away from the exclusive realm of States to concentrate on the societies and individuals concerned. Ultimately, reinforcing a human rights based approach to conflict resolution – notably through greater inclusion of civil society groups in peace negotiations, reinforcement of their role in society, and enhanced support to human rights-based confidence building measures – can reinforce peaceful solutions to conflict through law rather than through other means.

Recommendations

To international actors:

- Increase the focus on human rights (not just humanitarian and conflict resolution issues) in conflict management and peace negotiation processes and relations with *de jure* and *de facto* authorities more generally: systematically discuss human rights during international negotiations and other meetings (5+2, Geneva process, Minsk process, Incident Prevention and Response Mechanism in Georgia) to advance concrete solutions to challenges faced by individuals in disputed entities, and reinforce the voice of the independent civil society groups in bringing a human rights-based approach to conflict resolution;
- Mainstream the resolution of ‘frozen’ conflicts and look for concrete solutions to reinforce the rights of individuals in disputed territories in political instruments like the EU Eastern Partnership Action Plans and negotiations on Association Agreements, on the basis of concrete benchmarks;
- Increase financial and political support to human rights projects and to confidence-building measures, which should increasingly be conceived using a human rights-based approach;
- Irrespective of progress in peace negotiations, encourage depoliticised concrete collaboration between *de facto* and *de jure* authorities on the protection of rights directly affected by the disputed status of an entity (freedom of movement, property rights, right to citizenship, right to health and education, etc);
- Encourage *de jure* authorities to facilitate access to disputed entities, especially by repealing and rejecting the promulgation of laws that criminalise access to these territories;
- Encourage *de facto* authorities to facilitate access to the disputed entities, including by inviting UN Special procedures and other international human rights monitoring mechanisms, as well as ECtHR investigations.
- Encourage “people-to-people” contact and increase financial, political and technical support to independent civil society and human rights defenders in the disputed entities, notably with a view to:
 - reinforcing their capacity to ensure increased monitoring of the human rights situation in disputed entities and the provision of legal support to individuals whose rights are violated;
 - reinforcing the protection, capacity to act and voice of human rights defenders, notably through a thorough and creative implementation of instruments like the EU and OSCE guidelines on human rights defenders and through support to human rights defender projects beyond the borders of disputed territories;
 - enabling them to undertake human rights projects directed at improving awareness, protection and monitoring of human rights in the disputed entities;
 - supporting them to be the main actors of confidence-building projects with civil society from the *de jure* State. Human rights-based confidence-building projects should be particularly encouraged;
 - helping them to develop comprehensive human rights action plan in collaboration with all relevant stakeholders, including, where possible, the *de facto* authorities; and

- helping them increase their participation in regional (e.g. human rights civil society forum in the South Caucasus) or international forums (e.g. Eastern Partnership Civil Society Forum), with a view to addressing human rights challenges in the disputed territories in a more neutral environment, and in collaboration with civil society from the *de jure* State and other States.
- Work on creative measures to secure political commitments on respect for human rights by the *de facto* authorities without requiring the taking of a stand on the legal recognition of the disputed entities, including by:
 - Urging *de facto* authorities to commit to respect international human rights standards and covenants and develop human rights codes of conduct, and providing technical advice where necessary;
 - Urging *de facto* authorities to ensure genuine access to remedies for individuals through the existing *de facto* judicial system or allow access by these individuals to the judicial system of the *de jure* State; and
- Insisting on conducting field visits in the disputed entities, with a view to encouraging human rights dialogue with the *de facto* authorities and the independent civil society of the entity and ideally to lead to specific reports on the human rights situation in the disputed entity, in the spirit of the Hammarberg Report on Transnistria;
- Increasing contacts with independent civil society in disputed entities in order to benefit from their monitoring and advice on the human rights situation.
- Undertake where possible an independent international review of existing legislation, institutions and political commitments concerning human rights in the disputed entity, on the model of the ICCPR/ICESR review process in Taiwan.
- Encourage Ukraine to ratify the Rome Statute of the ICC and request the extension of the ICC's jurisdiction from 23 February 2014 onwards, throughout the entire territory of Ukraine

To the *de facto* authorities:

- Unilaterally commit to respect international human rights standards and covenants;
- Cooperate with international actors to establish human rights codes of conduct for the *de facto* authorities and integrate these standards into the *de facto* Constitution and relevant legislation;
- Facilitate access to the disputed entities, notably by inviting UN Special procedures and other international human rights monitoring mechanisms, as well as investigations by the EctHR;
- Recognise the legitimacy and encourage the development of an independent civil society;
- Encourage democratic and human rights compliant debate in the disputed entity, notably by guaranteeing freedom of expression, freedom of the media, freedom of assembly and encouraging the development of independent civil society and exchanges with civil societies outside the disputed entity;
- Guarantee access to remedies existing in the judicial and administrative *de facto* architecture;
- Refrain from adopting discriminatory legislation and practices against individuals coming from the *de jure* State;
- Cooperate with the *de jure* authorities to ensure that violations of rights directly resulting from the disputed status of an entity (freedom of movement, property rights, right to citizenship, right to health and education, etc) be concretely addressed. Refrain from conditioning this collaboration on “higher politics” challenges discussed in peace negotiations.
- Cooperate with international and national efforts to investigate and prosecute international crimes, including any activities related to any future investigations or prosecutions by the ICC that may arise.

To the de jure authorities:

- Facilitate access to the disputed entities, notably by repealing and rejecting the promulgation of laws that criminalise access to these territories;
- Refrain from adopting discriminatory legislation and practices against individuals coming from a disputed entity;
- Recognise the legitimacy and encourage the development of an independent civil society,
- Collaborate with the *de facto* authorities to ensure that violations of rights directly resulting from the disputed status of an entity (freedom of movement, property rights, right to citizenship, right to health and education, etc) be concretely addressed, and refrain from conditioning this collaboration on “higher politics” challenges discussed in peace negotiations.
- Cooperate with international and national efforts to investigate and prosecute international crimes, including any activities related to any future investigation or prosecution by the ICC that may arise.

To independent civil society groups and donors at entity, national and international levels:

- Encourage the development of a democratic culture and a human rights approach to challenges in the disputed entities;
- Reiterate the universality and indivisibility of human rights and refrain from engaging in discourses that inhere a selective, discriminatory or partial application of rights;
- Reinforce research and exchange on the specific patterns of human rights violations in the disputed entities, notably with a view to developing specific Action Plans for each entity. These Action Plans could encompass indicators to monitor and benchmark further developments and assess concrete actions or lack thereof taken by *de facto* authorities and other actors;
- Reinforce support to securing the visibility, capacity and security of Human Rights Defenders;
- Increase efforts to engage in exchange, technical cooperation and discussions on common solutions to the concrete human rights challenges faced by individuals, beyond territorial borders and the question of the legal status of the disputed entity;
- Reinforce, with the support of international NGOs and IGOs, monitoring of the human rights situation in disputed entities (with a particular focus on minority rights and hate speech), as well as human rights-based approaches to solutions to the problems faced by individuals there;
- Implement regional mobile monitoring groups;
- Strengthen NGO cooperation with social media for quicker dissemination of information on human rights abuses and for a more effective response to propaganda rhetorics;
- Reinforce the legal education of citizens in disputed entities, including through the dissemination of basic texts concerning human rights.
- Strengthen training and work on the Rome Statute and the ICC, and raise the awareness of the population about the Court’s mandate and mission;
- Cooperate with the ICC by providing data and technical advice.



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Through activities ranging from sending trial observers to organising international investigative missions, FIDH has developed, rigorous and impartial procedures to establish facts and responsibility. Experts sent to the field give their time to FIDH on a voluntary basis.

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**FIDH
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on 5 continents**

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inhuman or degrading treatment or punishment. Article 6: Everyone has the right to recognition everywhere as a person before the law. Article 7: All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination. Article 8: Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law. Article 9: No one shall be subjected to arbitrary arrest, detention or exile. Article 10: Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him. Article 11: (1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty

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