

UKRAINE

Procedural History

79. The situation in Ukraine has been under preliminary examination since 25 April 2014. The Office has received a total of 70 communications under article 15 of the Statute in relation to crimes alleged to have been committed since 21 November 2013.
80. On 17 April 2014, the Government of Ukraine lodged a declaration under article 12(3) of the Statute accepting the jurisdiction of the Court over alleged crimes committed on its territory from 21 November 2013 to 22 February 2014.
81. On 25 April 2014, in accordance with the Office's policy on preliminary examinations, the Prosecutor opened a preliminary examination of the situation in Ukraine relating to the so-called "Maidan events".¹²
82. On 8 September 2015, the Government of Ukraine lodged a second declaration under article 12(3) of the Statute accepting the exercise of jurisdiction of the ICC in relation to alleged crimes committed on its territory from 20 February 2014 onwards, with no end date. On 29 September, the Prosecutor announced, based on Ukraine's second declaration under article 12(3), the extension of the preliminary examination of the situation in Ukraine to include alleged crimes occurring after 20 February 2014 in Crimea and eastern Ukraine.¹³

Preliminary Jurisdictional Issues

83. Ukraine is not a State Party to the Statute. However, pursuant to the two article 12(3) declarations lodged by the Government of Ukraine on 17 April 2014 and 8 September 2015, the Court may exercise jurisdiction over Rome Statute crimes committed on the territory of Ukraine from 21 November 2013 onwards.

Contextual Background

Maidan events

84. At the start of the events that are the subject of the Office's preliminary examination, the Government of Ukraine was dominated by the Party of Regions, led by the President of Ukraine at the time, Viktor Yanukovich. Mass protests in the area of Independence Square (*Maidan Nezalezhnosti*) in Kyiv began

¹² [The Prosecutor of the International Criminal Court, Fatou Bensouda, opens a preliminary examination in Ukraine, 25 April 2014.](#)

¹³ [ICC Prosecutor extends preliminary examination of the situation in Ukraine following second article 12\(3\) declaration, 29 September 2015.](#)

on 21 November 2013, prompted by the decision of the Ukrainian Government not to sign an Association Agreement with the EU. Over the following weeks, the protest movement, which became known as the “Maidan” protests, continued to grow in strength and reportedly diversified to include individuals and groups who were generally dissatisfied with the Yanukovych Government and demanded his removal from office.

85. Violent clashes occurred at several points in the context of the demonstrations, resulting in injuries both to protesters and members of the security forces, and deaths of some protesters. Violence escalated sharply on the evening of 18 February 2014 when the authorities reportedly initiated an operation to attempt to clear the square of protesters. Scores of people were killed and hundreds were injured within the following three days. On 21 February 2014, under EU mediation, President Yanukovych and opposition representatives agreed on a new government and scheduled the presidential election for May 2014. However, on 22 February 2014, the Ukrainian Parliament voted to remove President Yanukovych, who left the country that day to the Russian Federation.

Events in Crimea and Eastern Ukraine from 20 February 2014 onwards

Crimea

86. From the last days of February 2014, protests against the new Ukrainian Government began to grow, notably in the eastern regions of the country and in Simferopol, the capital of the Autonomous Republic of Crimea. On 27 February 2014, armed and mostly uniformed individuals wearing no identifying insignia seized control of government buildings in Simferopol, including the Crimean parliament building. The Russian Federation later acknowledged that its military personnel had been involved in taking control of the Crimean peninsula.
87. The incorporation of Crimea and the city of Sevastopol into the Russian Federation was announced on 18 March 2014, following a referendum held two days earlier that was declared invalid by the interim Ukrainian Government and by a majority of States of the UN General Assembly.
88. In 2016, the Office made public its assessment that the situation within the territory of Crimea and Sevastopol would amount to an international armed conflict between Ukraine and the Russian Federation which began at the latest on 26 February 2014, and that the law of international armed conflict would continue to apply after 18 March 2014 to the extent that the situation within the territory of Crimea and Sevastopol factually amounts to an ongoing state of occupation.¹⁴ This assessment, while preliminary in nature, provides the legal framework for the Office’s ongoing analysis of information concerning crimes

¹⁴ See [Report on Preliminary Examination Activities 2016](#), para. 158.

alleged to have occurred in the context of the situation in Crimea since 20 February 2014.

Eastern Ukraine

89. In parallel to events in Crimea, anti-government protests took place in other regions of Ukraine following the departure of President Yanukovich, most notably in the east of the country. The situation deteriorated rapidly into violence and on 15 April 2014, the Ukrainian Government announced the start of an “anti-terror operation”, deploying its armed forces to the eastern provinces of the country. By the end of April, the acting Ukrainian President announced that the Ukrainian Government was no longer in full control of the provinces of Donetsk and Luhansk, declared that the country was on “full combat alert”, and reinstated conscription to the armed forces by decree. On 2 May 2014, protests in Odessa between pro-unity and pro-federalism supporters turned violent and ended in more than 40 deaths, mainly of pro-federalism protesters who had taken refuge inside a trade union building, in which a fire then started.
90. Following “referendums” held on 11 May 2014 that were deemed illegitimate by the Ukrainian Government, representatives of the self-proclaimed “Donetsk and Luhansk People’s Republics” (“DPR”/“LPR”) made declarations claiming “independence” from Ukraine. Both the DPR and the LPR also appealed to be incorporated into the Russian Federation. Both of the self-declared “republics” remain unrecognised by the vast majority of States.
91. The intensity of hostilities in eastern Ukraine rapidly increased. In spite of several attempts to broker a lasting ceasefire, including the “Minsk II” agreement of February 2015, which is monitored by the Organization for Security and Co-operation in Europe (“OSCE”), multiple violations of the ceasefire continue to be reported daily. Fighting of varying degrees of intensity, and involving the use of heavy military weaponry by both sides, has persisted for over three years.
92. During the course of the conflict, periods of particularly intense battles were reported in Ilovaisk (Donetsk oblast) in August 2014 and in Debaltseve (Donetsk) from January to February 2015. The increased intensity of fighting during these periods has been attributed to alleged corresponding influxes of troops, vehicles and weaponry from the Russian Federation to reinforce the positions of the armed groups.
93. In January and February 2017, intense shelling was reported in Avdiivka and Yasynuvata, on both sides of the contact line in Donetsk oblast, notably in built-up residential areas, prompting the UN Security Council to express in a press statement dated 31 January 2017 “grave concern” over the “dangerous deterioration” in eastern Ukraine, and the consequent “severe impact on the local civilian population”.

94. In its *Report on Preliminary Examination Activities 2016*, the Office assessed that by 30 April 2014 the level of intensity of hostilities between Ukrainian government forces and anti-government armed elements in eastern Ukraine had reached a level that would trigger the application of the law of armed conflict and that the armed groups operating in eastern Ukraine, including the LPR and DPR, were sufficiently organised to qualify as parties to a non-international armed conflict. The Office also cited additional information, pointing to direct military engagement between the respective armed forces of the Russian Federation and Ukraine, suggesting the existence of an international armed conflict in eastern Ukraine from 14 July 2014 at the latest, in parallel to the non-international armed conflict.
95. For the purpose of determining whether the otherwise non-international armed conflict involving Ukrainian armed forces and anti-government armed groups could be actually international in character, the Office continues to examine allegations that the Russian Federation has exercised overall control over armed groups in eastern Ukraine. The existence of a single international armed conflict in eastern Ukraine would entail the application of articles of the Statute relevant to armed conflict of an international character for the relevant period.

Alleged crimes

96. The following summary of alleged crimes is preliminary in nature and is based on publicly available reports and other information received by the Office, including during the reporting period. The descriptions below are without prejudice to the identification of any further alleged crimes which may be made by the Office in the course of its analysis, and should not be taken as indicative of, or implying any particular legal qualifications or factual determinations regarding the alleged conduct.

Crimea

97. *Alleged disappearances and killings*: information available suggests that during the period under consideration at least 10 people went missing and are believed to have been killed, allegedly by members of self-defence militias. Reportedly, some of the victims had openly opposed the new status of Crimea, while others were members of the Crimean Tatar community.
98. *Alleged ill-treatment*: between March and June 2014 members of self-defence militias are alleged to have ill-treated at least 10 people who were perceived to be “pro-Ukrainian” activists, including by means of beatings and the use of electric shocks. Ill-treatment reportedly occurred at checkpoints and in irregular places of detention.

99. *Alleged forced conscription of Crimean residents to serve in the armed forces of the Russian Federation:* reportedly, male residents of Crimea of conscription age were subjected to conscription into the armed forces of the Russian Federation on two occasions - in the spring of 2016 and in the period from April to July 2017. It is alleged that the *de facto* authorities threatened with legal sanctions those who refused to serve. As a result, some men reportedly fled Crimea to avoid conscription or criminal proceedings.
100. *Alleged deprivation of the rights of fair and regular trial:* in at least six criminal cases, it is alleged that the defendants' rights to fair and regular trial were not respected and that the trials lacked fundamental judicial guarantees.
101. *Alleged transfer of part of the civilian population of the Russian Federation into Crimea and of part of the population of Crimea outside the territory:* allegedly, the authorities of the Russian Federation have facilitated, through a number of means, the migration to Crimea of a significant number of Russian citizens, with the intention to settle there permanently. Furthermore, it has been reported that the *de facto* authorities transferred a certain number of prisoners from Crimea to prisons located in the Russian Federation.
102. *Alleged seizure of property:* the *de facto* authorities in Crimea have reportedly taken measures to transfer ownership of all public property in Crimea to themselves and to seize the private immovable property of individuals who opposed the new status of the peninsula.
103. *Alleged harassment of Crimean Tatar population:* since February 2014, members of the Crimean Tatar population and other Muslims residents of Crimea have allegedly been subjected to harassment and intimidation, including through a variety of measures such as house searches, arrests, trials, and restrictions to freedoms of expression, assembly and association. Reportedly, the Mejlis, the highest executive body of the Crimean Tatar people, was banned from operating on the alleged grounds that it was an "extremist" organisation. Reportedly, these measures have led members of the Crimean Tatar population to flee the territory.

Eastern Ukraine

104. The Office has recorded more than 1,200 incidents involving crimes allegedly committed since 20 February 2014 in the context of events in eastern Ukraine.
105. *Killings:* according to the OHCHR, some 10,225 people have been killed and 24,541 injured, including members of the armed forces and armed groups and civilians, since the start of the conflict. Between April 2014 and August 2017, at least 2,505 civilians were allegedly killed in armed hostilities. A further 298 civilians, including 80 children, were killed in the downing of the civilian aircraft

flight MH17 on 17 July 2014. In the same period, between 7,000 and 9,000 civilians were reportedly injured. Most civilian deaths resulted from the shelling of populated areas in both government-controlled territory and areas controlled by armed groups, with smaller numbers allegedly killed or injured by firearms. A number of summary executions of persons who were *hors de combat*, including members of armed groups and of Ukrainian forces who had been captured by the opposing side were also alleged. Such incidents were attributed to both pro-government forces and armed groups.

106. *Destruction of civilian objects*: in the course of the conflict hundreds of civilian objects, including residential properties, schools and kindergartens have allegedly been destroyed or damaged, largely by shelling, in both government-controlled territory and areas controlled by armed groups. In some cases, it is alleged that the shelling of such objects was deliberate or indiscriminate or that civilian buildings including schools have been improperly used for military purposes.
107. *Detention*: all sides have allegedly captured and detained both civilians and fighters of the opposing side in the context of the conflict in eastern Ukraine. Ukrainian security forces are alleged to have held both civilians and alleged armed group members without due process, while DPR and LPR forces are alleged to have arbitrarily detained, and in many cases ill-treated, civilians suspected of being pro-Ukrainian and members of Ukrainian armed forces. Irregular places of detention were reportedly used by both pro-Ukrainian forces and anti-government armed groups. Several hundred detentions have occurred during the conflict and in many instances those detained have been exchanged in mutual prisoner releases by both sides, though often after long periods of detention.
108. *Torture/ill-treatment*: torture or ill-treatment was reportedly perpetrated by both sides in the context of the conflict, involving several hundred alleged victims. Beatings, electric shocks and other forms of physical abuse, as well as mock executions and other threats causing severe psychological trauma were allegedly inflicted on civilians, including persons suspected of allegiance to the opposing side in the conflict, and on members of both Ukrainian armed forces and armed groups. In the majority of the alleged incidents, torture or ill-treatment occurred in the context of detention, frequently in “irregular” detention facilities and often during interrogation. Torture and ill-treatment were reportedly used to attempt to extract confessions from detained persons or to force them to cooperate.
109. *Sexual and gender-based crimes*: while there are some documented instances of alleged sexual and gender-based crimes in the context of the conflict in eastern Ukraine, the information available might suffer from underreporting due to social and cultural taboos, and a lack of support services for victims in conflict-affected areas, among other factors. The majority of documented instances allegedly occurred in the context of detention and targeted male and female

victims, including civilians and members of the armed forces and volunteer battalions or armed groups. These alleged crimes were attributed to both state and non-state forces. In several reported cases, sexual violence, including rape, threats of rape, beating of genitals and forced nudity were perpetrated in the context of interrogations.

110. *Disappearance*: official statistics suggest that more than 15,000 persons have been reported as “missing” in the conflict zone since April 2014. However, many of these individuals were believed to be dead, detained *incommunicado*, or to have since reappeared. In spite of the lack of clear statistics on the actual number of alleged disappearances, reliable sources have documented several instances of alleged forced disappearance, the majority of which were attributed to pro-government forces.

OTP Activities

111. In the past year the Office has continued to review and consider additional information of relevance to the classification of the situation in Crimea and eastern Ukraine under international law.
112. In parallel, the Office has continued to gather, receive and review available information from a range of sources on alleged crimes committed in Crimea and Eastern Ukraine, as well as to review further information received related to the Maidan events. The Office took a number of steps to gather further information on the methodology used by various sources and to verify the seriousness of information received, including through external verification of information by consulting multiple reliable sources.
113. The Office has further developed its database of over 1,200 reported incidents alleged to have occurred in the context of the situation in Eastern Ukraine. This database has been updated as additional information became available and provides a basis for the preliminary crime pattern analysis conducted by the Office. This analysis focusses on identifying key features of the conflict and of the alleged conduct of the different parties, such as the most affected locations, time frames and types of targets, the different *modus operandi* employed, as well as casualty figures.
114. Due to the volume of information in its possession, and the broad range of types of conduct, the Office has sought to prioritise certain types of alleged conduct believed to be most representative of the patterns of alleged crimes and to analyse a selection of incidents in greater detail with regard to the specific elements of crimes under the Statute. The alleged crimes that have been the subject of analysis by the Office to date, including detention-related conduct and shelling in eastern Ukraine, require complex factual and legal assessments, such as in relation to the conduct of hostilities and the applicable legal framework.

115. In its analysis, the Office is also considering the relevance of information presented by both parties to the proceedings that Ukraine initiated before the ICJ against the Russian Federation for alleged violations of the International Convention for the Suppression of the Financing of Terrorism and the International Convention on the Elimination of All Forms of Racial Discrimination.
116. During the reporting period, the Office continued to engage with State authorities and intergovernmental and non-governmental organisations in order to address a range of matters relevant to the preliminary examination and to seek additional information to further inform its assessment of the alleged crimes and other connected issues. For that purpose, it has held a number of meetings with relevant stakeholders both at the seat of the Court and during a mission to Ukraine in April 2017. During this mission, the Office held extensive consultations with the Office of the Prosecutor General of Ukraine in order to assess the availability of information relevant to the Office's analysis. The Office also met with other stakeholders, including a number of civil society organisations, to further verify the seriousness of information received, and discuss cooperation and progress in the preliminary examination.
117. The Office is analysing additional information related to the Maidan events that it has received in 2017. The new information is being examined with regard to the Office's previous preliminary analysis that the crimes allegedly committed during the period 21 November 2013 to 22 February 2014 would not amount to crimes against humanity under the Statute.
118. In September 2017, a representative of the Office also travelled to Ukraine to participate in a panel discussion hosted by the International Renaissance Foundation in the margins of the Yalta European Strategy annual meeting. The event took place before an audience of conference participants, experts in international and Ukrainian law and other interested civil society stakeholders and focused on the topic of "Returning justice to Crimea and eastern Ukraine".

Conclusion and Next Steps

119. The Office will continue to engage with the Ukrainian authorities, civil society and other relevant stakeholders on all matters relevant to the preliminary examination of the situation in Ukraine.
120. The Office will continue its detailed analysis of the alleged crimes, under the strict guidance of the Statute and with a view to reaching conclusions on jurisdictional issues within a reasonable time frame. Given the open-ended nature of Ukraine's acceptance of ICC jurisdiction the Office will also continue to record allegations of crimes committed in Ukraine to the extent that they may fall within the subject-matter jurisdiction of the Court. In accordance with its

policy on preliminary examination, the Office may further gather available information on relevant national proceedings at this stage of analysis.