

Lia Neukirch

“Frozen” Human Rights in Abkhazia, Transdniestria, and the Donbas: The Role of the OSCE in a Shaky System of International Human Rights Protection Mechanisms

Introduction

The disintegration of the Soviet Union in 1990 and 1991 led to the formation of several new countries with little or no previous experience of statehood. The national movements in Georgia, Moldova, and Ukraine combined their struggle to “escape” the Soviet Union with ambitious pro-Western agendas. At the same time, these struggles over the political direction of the newly created states – whether more towards Moscow or closer to Europe – have been accompanied by powerful secessionist movements that have challenged the territorial integrity of the young states themselves. While the latter were fighting to create their own fragile democracies, separatist military groups carved out the secessionist territories of Abkhazia and South Ossetia, Transdniestria, and, most recently, the Lugansk People’s Republic (LPR) and the Donetsk People’s Republic (DPR) in the Donbas region of Ukraine, profiting from political and socio-economic instability and augmenting their power with Russian support to create de facto entities.

Both Abkhazia and Transdniestria are considered “classic” frozen conflicts, while the recent conflict in Donbas is not yet openly referred to as such; the level of violence is still too high, and the political magnitude of the conflict is considered too great for open acceptance, with the result that it might remain unresolved for a prolonged period of time. Nonetheless, it is highly probable that Luhansk and Donetsk will follow the same path as the older frozen conflicts, becoming “another frozen conflict”,¹ as President Vladimir Putin of the Russian Federation declared on 13 November 2015. Furthermore, in view of the strategic interests of the strongest exogenous actor liable for the alteration of their status quo, namely the Russian Federation, and the influence that Moscow has had on the other frozen conflicts in Eastern Europe and the Caucasus, there is little doubt that Donbas will follow the same path.

As “frozen conflict regions”, these entities remain in a protracted state of legal uncertainty. The Russian Federation’s influence is both strong and obvious, which further augments the complexity of challenges related to

1 Cited in: *Putin says east Ukraine crisis may yet turn into “frozen conflict”*, Reuters, at: <https://www.reuters.com/article/us-ukraine-crisis-putin-interview/putin-says-east-ukraine-crisis-may-yet-turn-into-frozen-conflict-idUSKCN0T21HK20151113>.

human rights protection mechanisms by creating “black holes” for international human rights mechanisms. The Russian Federation’s powerful influence creates great difficulties with regard to respecting, protecting, and fulfilling human rights and undermines the rule of law in Abkhazia, Transdnistria, the LPR, and the DPR. However, regardless of who has recognized their *sui juris* existence and supported them over the past 25 years, human rights violations have occurred in these entities on a grand scale under the political, economic, and military protection and encouragement of Russia, which has led to the establishment of another two separatist regimes in Donbas.

This contribution looks into the human rights situation in these entities and their internal human rights protection mechanisms in order to identify the level of urgency for international human rights protection mechanisms in each case. In doing so, it focuses in particular on the right to life as the most fundamental human right. It then analyses the limitations and restrictions international bodies face in their work related to these de facto entities, with a special focus on the OSCE.

The Overall Human Rights Situation: De Facto Laws vs Bitter Reality

Due to the limits and difficulties associated with accessing these regions, there is little official information on the human rights situations in Abkhazia, Transdnistria, and the Donbas; however, allegations of human rights abuse persist. The reliability of human rights assessments in these regions is very shaky due to the difficulties imposed by de facto border controls, the autocratic nature of the regimes, the lack of access provided to international human rights monitoring mechanisms, and the isolation of these regions. For a more objective assessment of the overall human rights situation in the self-proclaimed entities, it is important to look at the existing de facto fundamental laws regulating human rights that have been adopted in these entities and to compare them to the international human rights indicators.

Chapter Two of the de facto Abkhazian constitution, adopted on 26 November 1994 and amended in 1999, is extensively dedicated to human rights and the freedoms of the citizen. It states that Abkhazia recognizes and guarantees the rights proclaimed in the Universal Declaration of Human Rights (UDHR), the International Covenants on Civil and Political Rights (ICCPR) and on Economic, Social, and Cultural Rights (ICESCR), and other universally recognized international legal instruments. The de facto constitution also guarantees a full spectrum of civil, political, economic, social, and cultural rights, subject to limitations by constitutional law “whenever this might be necessary”² to protect the constitution, security, public order, health, and morality, as well as in the event of a natural disaster, a state of emer-

2 *The Constitution of the Republic of Abkhazia*, Article 35.

gency or martial law. A moratorium on the death penalty has existed in Abkhazia since 1993, and this was made law in 2007. However, the option of using the death penalty as an exceptional measure persists under Article 54 of the de facto Criminal Code, leaving open the possibility of its being misused by a weak court system in times of non-peace, thus violating the right to life.³

In Transdniestria, the situation is very similar. Section Two of the de facto constitution of the Transdniestrian Moldovan Republic, adopted on 24 December 1995 and amended in 2000, sets out the rights and freedoms of its citizens. Unlike its Abkhazian equivalent, however, it does not refer to any international human rights conventions, other than stating that constitutional freedoms should not derogate from other universally recognized rights and freedoms. It states the de facto entity's responsibility to protect its citizens, guaranteeing the right to life yet allowing capital punishment for grave crimes. The capital punishment provision was abolished by a 1999 decree establishing a moratorium on the death penalty, in line with the recommendations of the Council of Europe's (CoE) Parliamentary Assembly. However, the death penalty is still allowed under Article 58 of the Transdniestrian Criminal Code, which grants the possibility of commuting a death sentence to life imprisonment. Transdniestria did impose a death sentence in 2003. Transdniestria pledges to unilaterally respect international human rights instruments, such as the ICCPR and ICESCR, the European Convention on Human Rights (ECHR), and the Convention on the Rights of the Child. However, a large part of the local population is not even aware of such human rights provisions, as there are no human rights awareness or public information efforts in the entity.

In the Ukrainian Donbas region, the constitutions of the two self-proclaimed entities are relatively young. The LPR adopted its Temporary Fundamental Law (Constitution) on 18 May 2014, and the DPR's constitution took effect on 14 May 2014. The Donetsk News Agency reported on 18 July 2017 that the two entities are drawing up a common constitution to form a joint entity called "*Malorossiya*", or "Little Russia". However, after being criticized by Moscow as a personal initiative of DPR head Alexander Zakharchenko, and after the LPR's declaration that it would not take part in the project, Zakharchenko abandoned the plan.⁴ The de facto constitutions of the LDR and the DPR both provide, in their respective second chapters, for the protection of human rights and freedoms of persons and citizens according to internationally recognized principles and norms, alongside consti-

3 Cf., for example, Thomas Hammarberg/Magdalena Grono, *Human Rights in Abkhazia Today*, July 2017, pp. 15-16.

4 Cf., for example, the Molorossiya project, which is a personal initiative of the self-proclaimed republic's leader – Kremlin, TASS, 18 July 2017, at: <http://tass.com/politics/956825>; Zakharchenko: we give up on name Malorossiya; discussion goes on, Dnnews, 10 August 2017, at: <https://dnnews.com/article/zakharchenko-we-give-name-malorossiya-discussion-goes>.

tutional protections, but these documents are more simplistic, even rudimentary, than the de facto constitutions of the other self-proclaimed entities.

In practice, however, the de facto fundamental laws regulating human rights and freedoms are not respected. They all include inconsistencies and vague language that frequently allow for the curtailment of human rights in ways that contradict international standards. In any case, the legal systems do not recognize the supremacy of the latter in practice and tend to function solely according to local de facto laws. Furthermore, the supreme duty and obligation of the citizens to protect their homeland and to participate in military service emphasize the importance of the military aspect in these areas and underline how easily human rights can be undermined under de facto provisions of the unrecognized laws of unrecognized entities. Ironically, while the entities claim to be upholding human rights in line with “international standards”, the indicators developed by international human rights NGOs show a major discrepancy between these declarations of compliance and what is occurring on the ground.

Between 2013 and 2017, Freedom House consistently rated Abkhazia as “partly free” in its *Freedom in the World* reports, indicating – with an overall freedom rating of 4.5 (where 1 is “most free” and 7 is “least free”) – that the situation in the region is still tense. Overall, Abkhazia scores poorly in what concerns human rights, receiving a grade of 4 for political rights, more specifically for the electoral process, political pluralism and participation, and the functioning of government. It scores even worse in terms of civil liberties, such as freedom of expression and belief, associational and organizational rights, the rule of law, personal autonomy, and individual rights, receiving a grade of 5. Even if Abkhazia’s grade for political rights rose from 5 to 4 between 2012 and 2013 (thanks to the holding of competitive parliamentary elections in which independent candidates were allowed), the overall human rights situation clearly stagnated between 2013 and 2017, with neither progression nor regression.

Transdniestria’s indicators over the same period are even worse. During the last five years, Transdniestria has constantly been rated “not free”, receiving grades of 6 out of 7 for both political rights and civil liberties, resulting in a grade of 6 for its overall freedom rating. Tension between Moldova and Transdniestria in 2015, accelerated by Moldova’s pursuit of closer ties with the European Union and following Russia’s 2014 invasion of Ukraine, did nothing to improve the human rights situation. Apart from its even poorer indicators, Transdniestria shares one common feature with Abkhazia: Like Abkhazia, Transdniestria has seen clear stagnation in its human rights situation, with neither progression nor regression. This can be interpreted from two opposite perspectives: It can either mean that the situation is more or less stable, without any kind of development (either positive or negative), thus emphasizing the “frozen” character of the area, or it can be interpreted as a “black hole” of human rights monitoring, reflecting the lack of monitoring mechan-

isms able to gather and provide accurate and up-to-date information on the actual human rights situation in the secessionist areas. Either way, human rights are both clearly “frozen” and completely detached from international standards and principles.

Unfortunately, no reports have ever been compiled to assess the human rights situation in Luhansk and Donetsk separately from that of Ukraine as a whole. This might be explained by poor access to the separatist regions due to the ongoing conflict situation. The current conflict, however, has rendered the human rights situation in the area precarious at best, as is evident in the accounts of human rights violations provided below.

In conclusion, the above indicators confirm that people in frozen conflicts still live under high risk of human rights abuses, despite the fact that the conflict situation is not currently “hot”. This reiterates the need for serious efforts to examine the realities behind unilateral declarations made by self-proclaimed entities in which they claim to fully respect international human rights treaties. The inconsistent pieces of de facto legislation must be subject to review in terms of their compliance with international law to ensure that international rules and norms are applied in practice.

The Fundamental Right to Life Cannot Be Guaranteed in Frozen Conflicts

The right to life is fundamental, yet it is constantly being challenged in the self-proclaimed republics. Since the end of the military conflict in Abkhazia and Transdniestria, no systematic cases of unlawful killing have been registered, yet sporadic cases still occur. Some notorious recent instances include a case in which a Georgian citizen was allegedly killed by Abkhaz border guards on 19 May 2016 at the Khurcha-Nabakevi crossing point on the Administrative Boundary Line and the unlawful killing of Vadim Pisari in Transdniestria on January 2012 (Pisari was shot in the back by a Russian peacekeeper when he refused to stop his car at a peacekeeping post near the Vadul-lui-Vodă checkpoint). In both cases, the perpetrator fled immediately and has faced no punishment. However, the Transdniestrian case reached the European Court of Human Rights (ECtHR), and, in April 2015, the Court held the Russian Federation accountable for its soldier’s unjustifiable decision to shoot and for the state’s procedural problems in investigating the case. Both cases demonstrate a failure to control the actions of guards at border checkpoints.

The situation regarding unlawful killings is much more dramatic in Donbas due to the continued armed conflict, which occasionally flares up. Amnesty International has identified at least 13 pro-Kyiv captives who have been summarily killed while in the custody of separatist militias, irregular armed groups who refer to themselves as “battalions”, or other separatist

fighting units in Donetsk.⁵ Aside from summary killings, the Office of the United Nations High Commissioner for Human Rights (OHCHR) recorded a total of 10,090 people killed in relation to the conflict between 14 April 2014 and 15 May 2017, including 2,777 civilians.⁶ In addition to these numbers, on 17 July 2014, 298 civilians, 80 of them children, were killed in the destruction of Malaysian Airline flight MH17, which was shot down by a BUK 332 surface-to-air missile fired from separatist-controlled DPR territory,⁷ as confirmed by the Office of the Prosecutor (OTP) of the International Criminal Court in its 2017 Report on Preliminary Examination Activities.⁸ Exceptional circumstances, such as the state or threat of war, internal political instability, and internal armed conflict, may not be invoked to justify extra-legal, arbitrary, and summary executions. It does not matter whether these violations are committed by a state or a non-state actor, as persons held by any party to an armed conflict are protected under international human rights and humanitarian law.

Arbitrary detention is also a common practice in the self-proclaimed entities in the absence of proper international supervision and monitoring. In all the entities we are considering here, arbitrary detentions are regularly carried out by the de facto authorities, along with Russian FSB (Federal Security Service) officers, on charges of “illegal border crossing”, without the accused’s being informed of the specific reasons for his or her arrest.⁹ For instance, 1,641 Georgian citizens were detained near Abkhazia between 2009 and 2015, most of them ethnic Georgians from the Gali region, and around 1,000 people were held in preventive detention in Transdniestria for up to three to four years.¹⁰ In eastern Ukraine, the problem of illegal detentions is exacerbated by the legal vacuum resulting from the absence of functional laws in the LPR and the DPR, and armed groups exercising effective control are led by their own consideration of law and order, which encourages arbitrariness, impunity, and brutal violations in the form of illegal detentions.¹¹ In

5 Cf. Amnesty International, *Summary Killings during the Conflict in Eastern Ukraine*, London 2014, pp. 8-11; Amnesty International, *Ukraine: Breaking Bodies. Torture and Summary Killings in Eastern Ukraine*, London 2015, pp. 16-20.

6 Cf. Office of the United Nations High Commissioner for Human Rights, *Report on the human rights situation in Ukraine 16 February to 15 May 2017*, sine loco 2017, p. 2.

7 Cf. Dutch Safety Board, *Investigation crash MH17, 17 July 2014, Donetsk*, at: <https://www.onderzoeksraad.nl/en/onderzoek/2049/investigation-crash-mh17-17-july-2014/publicatie/1658/dutch-safety-board-buk-surface-to-air-missile-system-caused-mh17-crash>.

8 International Criminal Court, The Office of the Prosecutor, *Report on Preliminary Examination Activities 2017*, 4 December 2017, The Hague, at: https://www.icc-cpi.int/itemsDocuments/2017-PE-rep/2017-otp-rep-PE_ENG.pdf.

9 Cf. Ministry of Foreign Affairs of Georgia, *Second Quarterly Report (April-June 2016) on the Human Rights Situation in the Occupied Regions of Georgia*, pp. 2, 10-11.

10 Cf. United States Department of State, *Country Reports on Human Rights Practices for 2009, vol. II, Europe and Eurasia, Near East and North Africa*, October 2012, Washington, D.C. 2012, p. 1687.

11 Cf. Coalition of Public Organizations and Initiatives “Justice for Peace in Donbas”/Hel-sinki Foundation for Human Rights, Poland, *Surviving Hell: Testimonies of Victims on Places of Illegal Detention in Donbas*, Kyiv, 25 September 2015, pp. 6-7, available at: <https://www.osce.org/odihr/185431>.

the LPR and the DPR, arbitrary detentions also take place mostly at checkpoints, but also at public gatherings, places of residence, workplaces, and elsewhere. Most of those detained are individuals with pro-Ukrainian views or are affiliated with the Ukrainian armed forces. The checkpoints are controlled by various illegal armed groups, and people can be detained not only by armed militant groups, identified or unidentified, but also by quasi-state agencies.¹² Usually, the groups who do the initial detaining are also those who decide on the further detention of illegally apprehended civilians and who perform transfers to detention places; the capture of members of the Ukrainian armed forces and volunteer battalions follows military confrontation with the direct involvement of the armed forces of the Russian Federation in the majority of cases.¹³ Even though a State Investigation Bureau was formally established to investigate these violations by the military and law enforcement officials, it was not fully staffed and was unable to begin its work by the end of 2016.¹⁴ Moreover, the impunity with which the de facto authorities operate in the LPR and the DPR helped make arbitrary detention an inherent feature of the territories outside the Ukrainian authorities' control.¹⁵

Incidents of torture and ill-treatment have been reported in all the de facto entities, usually by individuals returning to safer areas in the mother state. In Abkhazia, detainees are typically subject to beatings, burned with cigarettes, and are held in overcrowded cells in detention conditions that fall far below international standards.¹⁶ Abkhazia has been difficult to access since 2008, which makes evaluating the current situation with regard to the prison system and torture very difficult. In Transnistria, there are five penitentiary institutions where allegations of torture and other ill-treatment have been reported. Though the de facto constitution prohibits torture, the Criminal Code does not define it, instead stipulating a punishment of up to seven years' imprisonment for the crime of "torment" combined with torture.¹⁷ Cases of torture and ill-treatment have also been reported to have occurred in police stations, with the most common practices being food and water deprivation during detention in an attempt to make the victims admit their "guilt" or

12 Cf. *ibid.*, p. 16.

13 Cf. *ibid.*, p. 17.

14 Cf. Amnesty International, Report 2016/2017. The State of the World's Human Rights, on Ukraine, pp. 375-379, here: p. 375, at: <https://www.amnesty.org/download/Documents/POL1048002017ENGLISH.PDF>.

15 Cf. Anna Neistat, No justice for eastern Ukraine's victims of torture, in: *Newsweek*, 27 May 2016, at: <http://www.newsweek.com/no-salve-eastern-ukraine-victims-detention-torture-463514>.

16 Cf. U.S. Department of State, Georgia, in: *2016 Country Reports on Human Rights Practices*, 3 March 2017, at: <https://www.state.gov/j/drl/rls/hrrpt/2016/eur/265422.htm>.

17 Cf. Thomas Hammarberg, *Report on Human Rights in the Transnistrian Region of the Republic of Moldova*, 14 February 2013, p. 14, available at: <http://md.one.un.org/content/unct/moldova/en/home/publications/joint-publications/report-on-human-rights-in-the-transnistrian-region-of-the-republ.html>.

sign documents or statements.¹⁸ Allegations of torture and ill-treatment were also confirmed by the then UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, during his visit in 2008. Severe beatings are frequently handed out by militia members and guards during interrogations to force confessions, and the use of punishment cells with iron beds is common, as are torture techniques such as inserting needles under fingernails and electrocution. On top of this, medical facilities are inadequate, and prisoners have limited outdoor time, restricted access to water and sanitary facilities, and are subject to prolonged solitary confinement.¹⁹ Cells are small and overcrowded, with up to ten prisoners in a cell, which means that they must sleep in shifts. Cells are also cold, mouldy and lack ventilation and fresh air, sanitary facilities, and sufficient light; however, unofficial sources report that those who pay regular “fees” are given better imprisonment conditions. Those who do not pay are put in cells for 60 people.²⁰ People sentenced to death or life imprisonment are placed in solitary confinement, which is a form of inhuman punishment. With a total of 628 prisoners per 100,000 people, Transdniestria has one of the highest prison populations per capita in Europe.²¹

Healthcare and medical treatment in Transdniestria’s prisons are inadequate; prisoners regularly die of tuberculosis (prisoners are often inhumanly transported by the police to penitentiary institutions in unventilated metal railway wagons, which increases the risk of contamination).²² There is also a lack of medical facilities to treat the infection. In addition, prisoners suffer a high rate of HIV infection, and due to the lack of international programmes in Transdniestria the rate of infection is increasing. The local Ombudsperson reported 59 tuberculosis cases and 141 HIV cases among the detainees.²³ Detainees with disabilities receive no special conditions, in breach of human rights standards.²⁴ Transdniestrian authorities established an Investigation Committee to look into torture and ill-treatment cases in 2012 and created the

18 Cf. Civil Rights Defenders/Promo-Lex, *Human Rights in the Transnistrian region of Moldova*, Chisinau 2014, p. 38, at: https://promolex.md/old/upload/publications/en/doc_1395657140.pdf.

19 Cf. United Nations, General Assembly, Human Rights Council, *Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, Mission to the Republic of Moldova*, A/HRC/10/44/Add.3, 12 February 2009, pp. 51-55, available at: http://ap.ohchr.org/documents/alldocs.aspx?doc_id=14984.

20 Cf. Civil Rights Defenders/Promo-Lex, cited above (Note 18), p. 14.

21 Cf. Nowak, cited above (Note 19), p. 19.

22 Cf. *ibid.* p. 12.

23 Cf. U.S. Department of State, Moldova, in: Bureau of Democracy, Human Rights, and Labor, *2016 Country Reports on Human Rights Practices, Report*, 3 March 2017, at: <https://www.state.gov/j/drl/rls/hrrpt/2016/eur/265450.htm>.

24 United Kingdom Home Office, Country Policy and Information Note, *Moldova: Human rights in Transnistria*, Country Policy and Information Note, June 2017, p. 29 (citing Promolex/International Federation of Human Rights: *Human Rights in the Transnistrian region of the Republic of Moldova*, date of report 2016).

position of Transnistrian Human Rights Commissioner. However, the committee does not undertake monitoring visits to places of detention and appears to be rather ineffective, as complaints from alleged victims of torture and inhuman or degrading treatment continue to be reported.

In eastern Ukraine, some 71 per cent of civilians and 68 per cent of servicemen captured by the LPR and the DPR have been subjected to torture.²⁵ Since September 2014, when the first Minsk agreement was signed, 3,083 people have been released through organized exchanges, while another 117 remain in captivity.²⁶ The Eastern Human Rights Group reported systemic abuse of detainees, including torture, starvation, denial of medical care, solitary confinement, and the use of prisoners as slave labour to produce goods for sale to provide a source of personal income for Russian-backed separatist groups.²⁷ Illegally detained individuals have reported widespread torture practices, including assault; the use of pneumatic weapons and cutting and thrusting weapons; mock executions; sleep, water, and food deprivation; blindfolding; cuffing; the placing of plastic bags over heads; cutting; the application of electric shocks to body parts; severe beatings; belt suffocation; being tied with ropes and rubber straps; and the infliction of bullet wounds with small-calibre weapons.²⁸

A total of 61 places of detention have been recorded. As a rule, detainees are held in the buildings of law enforcement agencies, in administrative buildings of local authorities, and at the premises of industrial and public enterprises, which are not equipped for these purposes and are unable to meet detainees' medical, nutritional, or basic sanitary needs. Half of detainees reported that they had at times been kept in basements and vehicle sheds and had been made to use plastic bottles in lieu of toilets.²⁹ A particularly serious problem in eastern Ukraine is the systematic use of torture against the background of an ongoing armed conflict and the presence of illegal armed groups. This is exacerbated by a lack of monitoring mechanisms, which means that the only information on torture cases comes from former detainees. Access to the LPR and the DPR to carry out international human rights monitoring is extremely limited, and those few organizations that maintain a presence in the separatist territories are restricted in their operations by the de facto authorities as well as their own limited capacities.

25 Cf. Ukrainian Helsinki Human Rights Union, *Human Rights situation in Donbas*, Kyiv 2017, p. 2.

26 Cf. Amnesty International, *Ukraine: Breaking bodies, torture and summary killings in Eastern Ukraine*, cited above (Note 5), p. 14.

27 Cf. U.S. Department of State, Ukraine, in: Bureau of Democracy, Human Rights and Labor, *2016 Country Reports on Human Rights Practices*, Report, 3 March 2017, at: <https://www.state.gov/j/drl/rls/hrrpt/2016/eur/265484.htm>.

28 Cf. Coalition of Public Organizations and Initiatives "Justice for Peace in Donbas"/Helsinki Foundation for Human Rights, Poland, *Surviving Hell*, cited above (Note 11), pp. 17, 27-34.

29 Cf. *ibid.*, pp. 13, 25.

Besides the right to life, many other rights are also violated in these de facto entities, such as freedom of movement (by means of “passportization” and special “permits” to enter border zones, “borderization”, closures of crossing points, and restrictions and discrimination at de facto border crossings), the right to education (via regulations prohibiting languages of instruction, verbal threats, and the use of educational facilities for military purposes), freedom of the media and expression (censorship, self-censorship, media monopolies, and the subordination of the media to the de facto authorities), freedom of religion (closely interlinked with the internal political situation and patterns of discrimination against minority religious groups), political rights, and more. Such violations are often linked with de facto legal restrictions based on ethnic criteria, such as the rules that discriminate against Georgians from the Gali District of Abkhazia, Romanian language speakers in Transdniestria, and pro-Ukrainians in Donbas. Issues around ethnicity can become highly political and may be a cause of ethnic clashes, propaganda, fear, impunity, discriminatory policies and laws, and autocracy. Above all, ethnicity is becoming a major issue in terms of security and stability.

This broad spectrum of human rights violations, centred on violations of the right to life, clearly shows that a human rights “black hole” exists in the occupied territories of Georgia, Moldova, and Ukraine, demonstrating the urgent necessity of ensuring that international human rights monitoring mechanisms receive unhindered and continuous access to them. But what monitoring mechanisms, if any, exist at present in Abkhazia, Transdniestria, and Donbas? Do they function? And, if so, what is the OSCE’s contribution to the human rights monitoring process?

Existing Monitoring and Protection Mechanisms in Frozen Conflict Areas

Neither Abkhazia nor Transdniestria admit that human rights violations have persisted in their entities following the end of armed conflict. In Donbas, where armed conflict continues, it is accompanied by considerably higher levels of systematic abuse of human rights and freedoms. Unfortunately, while international organizations such as the UN, the EU, the CoE, and the OSCE have developed many tools for the defence of human rights, such tools are not being applied in these areas, and these organizations are granted little if any access. This transforms these entities into “ghettoes” where local residents are kept isolated – not only territorially, but also from human rights protection mechanisms.

Despite the fact that Georgia, Moldova, and Ukraine are members of international organizations that have established presences or mission headquarters in these countries, the de facto authorities of the separatist entities, along with the Russian Federation (which exercises effective control), prevent many international organizations from entering the entities. This makes

it extremely difficult to report on the real human rights situation inside these territories, rendering them complete black holes in terms of monitoring human rights and holding perpetrators of violations accountable. While the de facto entities have established their own local human rights monitoring mechanisms, law enforcement bodies, and courts, these are heavily corrupt, unreliable, and in need of reform. Although Transnistria established a local “investigation committee” for torture cases in 2012 and has had an Ombudsman’s office since 2006, these are not effective, and the credibility of their reporting is doubtful. There is no other effective independent monitoring mechanism in place. The Transnistrian Ombudsman did create an advisory group to serve as a monitoring mechanism, but the local authorities are denying access to detention institutions on the pretext that it is impossible to guarantee the physical safety of monitors during meetings with prisoners.³⁰ In Abkhazia, the post of Human Rights Commissioner has existed since 2008, albeit directly under the supervision of the de facto President of Abkhazia. It is clear that there is an absence of effective tools that could protect or monitor human rights in these entities.

The tense relations that exist between Abkhazia and Georgia, Transnistria and Moldova, and the LPR and the DPR and Ukraine mean that official national human rights monitoring institutions are not granted the access they require. The ministries of foreign affairs of all mother states prepare reports assessing the human rights situation in their occupied regions, aiming to inform the international community of the situation on the ground. However, the reporting is based on existing information from national and international open sources on human rights violations and assesses only some of the best-known examples. The methodology therefore does not enable the collection and production of new data on the human rights situation in occupied regions.³¹

The only international presences on the ground are the following: In Transnistria, the OSCE has field offices in Tiraspol and Bender. The organizations that are active in Abkhazia are Action Contre La Faim (ACF), the Danish Refugee Council, Première Urgence – Aide Médicale Internationale, the United Nations Development Programme (UNDP), and the United Nations Children’s Fund (UNICEF). The OSCE has field offices in Donetsk and Luhansk, where the International Committee of the Red Cross (ICRC) is also active, and there is a UN Human Rights Monitoring Mission in Donetsk. In Ukraine, where the conflict is still active, the OSCE Special Monitoring Mission (SMM) to Ukraine has a mandate to monitor the human rights situation and establish facts and report on incidents, although it concentrates its efforts

30 Cf. U.S. Department of State, Moldova, cited above (Note 23).

31 Cf. United Nations, General Assembly, Human Rights Council, *Letter dated 25 November 2016 from the Chargé d'affaires a.i. of Georgia to the United Nations Office at Geneva addressed to the President of the Human Rights Council*, A/HRC/34/G/2, 13 January 2017, p. 1, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/006/06/PDF/G1700606.pdf>.

on monitoring ceasefire violations, including civilian casualties and hardships related to the armed conflict. It does not – as its reporting reflects – undertake systematic human rights monitoring. The ICRC has offices in Donetsk and Luhansk, but besides supporting the exchange of captives and efforts to search for missing persons, it likewise concentrates its efforts on conflict-related humanitarian work. The OHCHR Human Rights Monitoring Mission in Ukraine has also deployed human rights monitors to Donetsk and provides the most comprehensive information on human rights violations in eastern Ukraine.

The UN mechanisms have been (and remain) affected by arbitrary access in the de facto entities. The United Nations Observer Mission in Georgia (UNOMIG) was established in 1993 and the UN Human Rights Office Abkhazia, Georgia, (HROAG) in 1996 with the aim of protecting human rights in Abkhazia. The former's mandate was not renewed in 2009 after Russia vetoed the decision. This leaves some 60,000 vulnerable ethnic Georgians in Abkhazia. In Transnistria and Donbas, the UN has never established peace-keeping missions; however, it has regularly used “individual special procedures” mechanisms to monitor the situation, despite the great difficulty of accessing the territories. UN working groups have been unable to enter Abkhazia due to the proxy regimes' unwillingness to grant access. The last UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to succeed in visiting Abkhazia was Manfred Nowak, who visited the area on 26 February 2010. In March 2015, attempting a follow-up visit, his successor Juan Méndez was not granted access by the de facto authorities.³² The same is true for the UN Special Rapporteur on the sale of children, child prostitution and child pornography and the UN Special Rapporteur on the human rights of internally displaced persons (IDPs), both of whom were denied access to Abkhazia in 2016. Transnistria was visited by the UN Senior Expert on Human Rights in Transnistria, Thomas Hammarberg, in 2012. He presented a comprehensive report on the human rights situation, identifying the lack of independent monitoring and human rights protection mechanisms and lacunae in de facto laws. The then UN Deputy High Commissioner for Human Rights, Flavia Pansieri, also visited Transnistria in April 2014, reiterating the obligation of the authorities in effective control to respect and guarantee the human rights of people living in the territory.³³ Even though Transnistria granted access to the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment in

32 Cf. United Nations, Human Rights, Office of the High Commissioner, Georgia has come a long way, but more needs to be done – UN Special Rapporteur on torture, Tbilisi, 19 March 2015, at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15724>.

33 Cf. United Nations, Human Rights, Office of the High Commissioner, Statement by the UN Deputy High Commissioner for Human Rights, Flavia Pansieri, at the end of her mission to the Republic of Moldova, Chisinau, 11 April 2014, at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14498&LangID=E>.

2012, the conclusion was that none of the previous recommendations had been implemented.

At the regional level, Georgia, Moldova, and Ukraine are all members of the CoE, have all ratified the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, and are all subject to the jurisdiction of the ECtHR. However, neither the CoE Commissioner for Human Rights nor delegations of the Secretariat have been granted access to the territories, with the exception of the visit to Transdniestria by Thomas Hammarberg in 2012 in his capacity as CoE Commissioner for Human Rights. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) made one ad hoc visit to Abkhazia in 2009, four ad hoc visits to Transdniestria in 2000, 2003, 2004, and 2006, and visited some detention institutions in Luhansk in 2009 (before the conflict) but none in Donetsk.

The Role of the OSCE in Human Rights Monitoring in Relation to Abkhazia, Transdniestria, and Donbas

The OSCE has played an important role in all three separatist territories, both during and after the conflicts. Georgia is an OSCE participating State and has therefore undertaken various commitments with regard to human rights, the rule of law, and democratization, including the prohibition of torture and other cruel, inhuman, or degrading treatment and freedom from arbitrary arrest or detention. The OSCE Mission to Georgia was established in December 1992 and has deployed human rights monitors in Abkhazia to monitor abuses, intervene on behalf of victims, receive complaints, and report to the Permanent Council of the OSCE. The OSCE Mission to Georgia has also liaised with UN operations in Abkhazia, working towards a comprehensive settlement and negotiations and promoting respect for human rights by developing relevant projects. However, the Mission was closed in 2009, leaving the European Union Monitoring Mission (EUMM) as the only international monitoring mechanism on the ground. Unfortunately, it has been unable to fulfil its mandate fully as it continues to be denied access to the occupied regions of Abkhazia.

The OSCE Mission to Moldova was established in 1993 to facilitate a lasting and comprehensive political settlement of the Transdniestrian conflict. While being primarily tasked with mediating between Chişinău and Tiraspol, the Mission was also mandated to gather and provide information, to investigate specific incidents, and to provide advice and expertise on the effective observance of international obligations and commitments regarding human and minority rights.³⁴ The Mission therefore has a clear mandate to support

34 Cf. CSCE Mission to the Republic of Moldova, CSO Vienna Group, Journal No. 7, 11 March 1993, Annex 1, at: <http://www.osce.org/moldova/41137>.

the implementation of international human rights obligations in Transdnestria.³⁵ The OSCE Mission opened a field office in Tiraspol in 1995 and one in Bender in 2003. While these offices are staffed only with local people, they serve as a bridgehead for international staff travelling to Transdnestria several times per week and as antennae for the OSCE in the region. An exchange of letters between the Mission and the Transdnestrian leader guaranteed Mission staff freedom of movement in the region.³⁶ However, this access has not always been granted in practice, and, after the agreement was unilaterally revoked by the then Transdnestrian leadership in 2013, access became even more limited.³⁷ Still, the Mission made use of its privileged opportunity of access and assisted other international organizations in entering the area for human rights monitoring. While the OSCE Mission also receives and deals with individual human rights complaints, its main value for human rights monitoring and protection is its access to the region and to all levels of the de facto authorities and key decision-makers. The OSCE Mission has carried out vital work by closely following on-the-ground developments regarding the Moldovan-administered Latin script schools in Transdnestria and, through its permanent presence, has also supported the work of the OSCE High Commissioner on National Minorities (HCNM) on this issue. Through its reporting to the OSCE Permanent Council and in particular its active media work during the 2014 school crisis, the Mission's work had both preventive and corrective effects with regard to violations of the right to education in Transdnestria. As part of its mediation role in the overall conflict settlement, the Mission, together with the HCNM, facilitated agreement on a range of ad hoc and systematic measures that have allowed the schools to continue operating.³⁸ The Mission's work was a mixture of on-the-ground monitoring, reporting to the international community, and direct intervention with the Transdnestrian authorities.³⁹ It also supported media outlets and journalists who faced difficulties as a result of their criticism of the regime, assisted with individual cases being heard before the ECtHR, and supported election processes in various ways, including by facilitating the ability of Transdnestrian

35 Cf. Klemens Büscher, *The Missions to the Republic of Moldova and the Ukraine: A Double-Entry Balance Sheet*, in: Institute for Peace Research and Security Policy at the University of Hamburg/IFSH (ed.), *OSCE Yearbook 1999*, Baden-Baden 2000, pp. 195-210, here: p. 198; cf. also OSCE, *OSCE Mission to Moldova, Mandate*, at: <https://www.osce.org/moldova/105894>.

36 Cf. Rolf Welberts, *Der Einsatz der OSZE in der Republik Moldau [The OSCE Operation in the Republic of Moldova]*, in: Institut für Friedensforschung und Sicherheitspolitik an der Universität Hamburg/IFSH (ed.), *OSZE-Jahrbuch 1995*, Baden-Baden 1995, pp. 193-210, here: p. 197.

37 Cf. United States Mission to the OSCE, *Concerns about OSCE Access to the Transnistria Region, As delivered by Ambassador Daniel B. Baer to the Permanent Council, Vienna, 3 April 2014*, PC.DEL/372/14, 3 April 2014, available at: <http://www.osce.org/pc/117322>.

38 Cf. William H. Hill, *The Transdnestrian Settlement Process – Steps Forward, Steps Back: The OSCE Mission to Moldova in 2005/2006*, in: Institute for Peace Research and Security Policy at the University of Hamburg/IFSH (ed.), *OSCE Yearbook 2006*, Baden-Baden 2007, pp. 153-172, here: p. 156.

39 Cf. Welberts, cited above (Note 36), p. 200.

residents to cast their votes in the Moldovan elections. In addition to providing these direct contributions to human rights monitoring and protection, the Mission supported visits by other international organizations to Transdnistria, including the CPT and the UN Special Rapporteur on Torture.

In Ukraine, the OSCE opened its first field operation in 1994, primarily to prevent the escalation of a potential conflict over Crimea.⁴⁰ This Mission was closed in April 1999 as its mandate was considered to have been fulfilled, and it was replaced by the OSCE Project Co-ordinator in Ukraine (PCU).⁴¹ In contrast to the earlier mission, the PCU has no mandate for human rights monitoring and reporting, although it can carry out project activities in this field, and, as a matter of fact, the first large-scale project it carried out was a review of human rights legislation. While the PCU continues to exist in 2017, its activities do not reach beyond the area controlled by the government in Kyiv. On 21 March 2014, the OSCE Permanent Council decided to deploy the Special Monitoring Mission to Ukraine, with additional field offices in Donetsk and Luhansk.⁴²

However, the OSCE SMM, tasked with contributing to the reduction of tensions and fostering peace and stability throughout Ukraine,⁴³ has both a clear mandate for human rights monitoring and a solid presence in DPR- and LPR-controlled territory. The SMM, which was established right after Crimea's illegal annexation by Russia and before the military escalation in Donbas, is mandated to "establish and report facts in response to specific incidents and reports of incidents, including those concerning alleged violations of fundamental OSCE principles and commitments" and to "monitor and support respect for human rights and fundamental freedoms".⁴⁴ The SMM established offices in Donetsk and Luhansk and deployed 600 of its 700 civilian monitors to government- and rebel-controlled areas in eastern Ukraine. However, with the military escalation of the conflict in the Donbas after May 2014 and even more after the Minsk agreements in September 2014, the SMM developed rapidly into a civilian peacekeeping operation with a very strong focus on monitoring the ceasefire and reporting on violations of the Minsk agreements. Consequently, the human rights-related monitoring and reporting of the SMM in Donbas refers mainly to incidents involving civilian casualties and potential violations of international humanitarian law, such as

40 Cf. Büscher, cited above (Note 35), p. 197.

41 Cf. Organization for Security and Co-operation in Europe, Permanent Council, *Decision No. 295, PC.DEC/295*, 1 June 1999, available at: <http://www.osce.org/pc/29031>.

42 Cf. Organization for Security and Co-operation in Europe, Permanent Council, *Decision No. 1117, Deployment of an OSCE Special Monitoring Mission to Ukraine*, PC.DEC/1117, 21 March 2014, available at: <https://www.osce.org/pc/116747>; Claus Neukirch, *The Special Monitoring Mission to Ukraine: Operational Challenges and New Horizons*, in: Institute for Peace Research and Security Policy at the University of Hamburg/IFSH (ed.), *OSCE Yearbook 2014*, Baden-Baden 2015, pp. 183-197.

43 Cf. Organization for Security and Co-operation in Europe, Permanent Council, *Decision No. 1117*, cited above (Note 42), p. 1.

44 Ibid.

indiscriminate shelling of civilian residential areas or firing from such areas. Other than incidents related to ceasefire violations, the SMM has not looked into a single human rights-related case. However, it has offered analytical reports on a range of human rights-related issues, such as a report on the hardships facing conflict-affected civilians, which it produced in 2017.⁴⁵ Previous thematic reports touching on issues related to human rights in the DPR and the LPR have focused on access to water⁴⁶ and to justice in these areas⁴⁷ and to the situation of formerly state-financed institutions, such as penitentiaries, orphanages, and medical institutions.⁴⁸

The SMM has further facilitated the exchange of civilians and fighters held by each side as captives or prisoners and, in July 2014, crucially facilitated international investigators' access to the crash site of Malaysia Airlines Flight 17 (MH17). While the SMM's human rights monitoring structure is weak compared to its structure for monitoring ceasefire violations, the work of the SMM in human rights monitoring and reporting is still highly relevant, and sometimes decisive, as the SMM has access to decision makers and the de facto authorities. Moreover, no other international organization has such a large and well-distributed presence in the DPR and the LPR, particularly in the so-called grey zones between the front lines and other hotspots along the line of conflict.

The three OSCE institutions – the Office for Democratic Institutions and Human Rights (ODIHR), the HCNM, and the Representative on Freedom of the Media (RFOM) – are mandated to monitor human rights developments and compliance with OSCE commitments in all OSCE participating States, in line with their respective mandates and with a particular view to “early warning”. ODIHR is tasked with assisting in monitoring the implementation of commitments in the human dimension, and, among other activities, carries out election observation missions. The HCNM provides “early warning” and, as appropriate, “early action” at the earliest possible stage in regard to tensions involving national minority issues that have the potential to develop into conflicts, affecting peace, stability, or relations between participating States. The RFOM is tasked with advocating for and monitoring the implementation of OSCE commitments on freedom of expression. All three institutions have worked in Georgia, Moldova, and Ukraine in recent years;

45 Cf. OSCE Special Monitoring Mission to Ukraine, Thematic Report, *Hardship for conflict-affected civilians in eastern Ukraine*, February 2017, available at: <http://www.osce.org/ukraine-smm/300276>.

46 Cf. OSCE Special Monitoring Mission to Ukraine, *Access to water in conflict-affected areas in Donetsk and Luhansk regions*, September 2015, available at: <http://www.osce.org/ukraine-smm/183151>.

47 Cf. OSCE Special Monitoring Mission to Ukraine, Thematic Report, *Access to Justice and the Conflict in Ukraine*, December 2015, available at: <http://www.osce.org/ukraine-smm/212311>.

48 Cf. OSCE Special Monitoring Mission to Ukraine, Thematic Report, *Findings on Formerly State-Financed Institutions in the Donetsk and Luhansk Regions*, 30 March 2015, SEC.FR/273/15, 30 March 2015, available at: <http://www.osce.org/ukraine-smm/148326>.

however, their access and impact on human rights issues in Abkhazia, Transnistria, and Donbas have been limited and, with the exception of the HCNM in Abkhazia, weaker than those of the respective OSCE field operations.

Since the military escalation of the situation in eastern Ukraine, ODIHR, the HCNM, and the RFOM have focused their activities on government-controlled territory. For reasons related to their undetermined status and to security, ODIHR has not carried out any election observation activities in the de facto entities so far. However, the Minsk agreements foresee a key role for ODIHR in the observation of local elections to be carried out in certain areas of the Donetsk and Luhansk regions under Ukrainian law. From early March to mid-April 2014, and hence prior to the military escalation of the conflict, ODIHR and the HCNM jointly carried out a Human Rights Assessment Mission to Ukraine. While it had a strong focus on Crimea, it also revealed human rights violations against pro-Maidan activists and journalists in Luhansk.⁴⁹ ODIHR's final report on the 2014 presidential election noted that the illegal actions undertaken by the DPR and LPR authorities "constituted attempts to prevent the election and deny citizens the fundamental right to freely participate and elect their chosen representative".⁵⁰ Regarding Abkhazia, ODIHR published a report on the human rights situation in war-affected areas following the 2008 conflict in Georgia in November 2008, which also focuses on the situation of IDPs in Abkhazia. In Transnistria, ODIHR's most relevant involvement dates back to the monitoring of the trial of the "Ilaşcu Group" back in 1993.⁵¹

With regard to the HCNM in Abkhazia, the focus has been on education, language issues, and the situation of IDPs. During a visit to Abkhazia in 2009, HCNM Knut Vollebæk urged Abkhaz authorities "to put an end to the pressure being exercised on the Georgian population in the Gali District through the limitation of their education rights, compulsory 'passportization', forced conscription into the Abkhaz military forces and restrictions on their freedom of movement".⁵² Vollebæk visited the region again in 2010 and repeated his concerns. However, his successor, Astrid Thors, was not able to travel to Abkhazia and could only follow the situation by visiting areas controlled by the Georgian government. When it comes to Transnistria, the HCNM, together with the OSCE Mission to Moldova, played a key role in

49 Cf. OSCE HCNM/OSCE ODIHR, *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*, The Hague/Warsaw, 12 May 2014, especially pp. 26-27 and 32, available at: <https://www.osce.org/odihr/118476>.

50 OSCE Office for Democratic Institutions and Human Rights, *Ukraine, Early Presidential Election, 25 May 2014, OSCE/ODIHR Election Observation Mission, Final Report*, Warsaw, 30 June 2014, p. 2, available at: <http://www.osce.org/odihr/elections/ukraine/120549>.

51 Cf. Welberts, cited above (Note 36), pp. 200-201.

52 Knut Vollebæk, cited in: OSCE, *OSCE High Commissioner on National Minorities deeply concerned by recent developments in Abkhazia*, The Hague, 14 April 2009, at: <http://www.osce.org/hcnm/50824>.

keeping Transdniestria's Latin-script schools in operation. All HCNMs have visited Transdniestria to discuss the plight of these schools, most recently in 2014 and 2016, when HCNM Astrid Thors expressed her concern about their possible closure.

The RFOM has been less active in the region and was prevented from entering Transdniestria in 2004. In Abkhazia in 2008, the RFOM called for journalists to be granted unlimited access to the self-proclaimed entity following the end of fighting. However, the RFOM has been more active in eastern Ukraine, visiting the regions of Luhansk and Donetsk in 2013-2014 and reporting on attacks on broadcasting stations and violence and intimidation against journalists by armed groups, while also denouncing cases where radio and television channels were banned or simply switched off.⁵³ During the RFOM's recent visit to Ukraine on 20 October 2017, the topics discussed included the detention of journalists in Donetsk and the importance of media workers' being free from fear of violence.

At its Twenty-Fifth Annual Session, held in Tbilisi from 1-5 July 2016, the OSCE Parliamentary Assembly (PA) adopted a resolution on the conflict in Georgia, in which it expressed concern about the humanitarian situation of IDPs and refugees in the occupied regions of that country. It also condemned the installation of razor-wire fences by the Russian occupation forces, which deprives the local population of fundamental rights and freedoms, including freedom of movement and the right to a family life, property, and education in their native language, along with other civil and economic rights.⁵⁴ At the 2017 OSCE PA Annual Session in Minsk (5-9 July), it again expressed concern over the humanitarian and security situation in occupied Abkhazia and encouraged the demilitarization in the conflict region of Transdniestria.⁵⁵ It also called upon all participating States to grant unimpeded access to international human rights monitoring mechanisms and missions. Concerning eastern Ukraine, the Tbilisi Annual Session of the OSCE PA recognized "the need to grant all international and humanitarian organizations immediate access to the territories currently under occupation in certain areas of the Donetsk and Luhansk regions".⁵⁶

In conclusion: The OSCE is one of few organizations that have been able to access territories where a state of "frozen conflict" prevails. In add-

53 Cf. OSCE, *Freedom of media issues during Ukraine crisis*, Statements by the Representative on Freedom of the Media, at: <https://www.osce.org/fom/11602>.

54 Cf. Resolution on the Conflict in Georgia, in: OSCE PA, Tbilisi Declaration and Resolutions Adopted by the OSCE Parliamentary Assembly at the Twenty-Fifth Annual Session, Tbilisi, 1 to 5 July 2016, pp. 25-26, here: p. 25, paras 8 and 9, available at: <https://www.oscepa.org/meetings/annual-sessions/2016-tbilisi-annual-session>.

55 Cf. Chapter 1, Political Affairs and Security, in: OSCE PA, Minsk Declaration and Resolutions Adopted by the OSCE Parliamentary Assembly at the Twenty-Sixth Annual Session, Minsk, 5 to 9 July 2017, pp. 1-7, here: p. 2, para. 12, and p. 6, para. 46.

56 Chapter 1, Political Affairs and Security, in: OSCE PA, Tbilisi Declaration and Resolutions Adopted by the OSCE Parliamentary Assembly at the Twenty-Fifth Annual Session, cited above (Note 54), pp. 1-9, here: p. 5, para. 37.

ition, the Organization has co-operated with other international institutions, facilitating their access to these areas and helping to ensure that they have a full spectrum of instruments and real chances to carry out the objective, real-time monitoring of human rights violations in these entities. If we compare the available mandates with the actual focus of OSCE activities in these areas, however, we must concede that the OSCE's potential when it comes to human rights monitoring and protection has been far from fully realized. More engagement, dedication, and political dialogue is needed from the OSCE when it comes to monitoring and protecting human rights in frozen conflicts.

Conclusion

The monitoring and reporting of human rights violations carried out by the UN, the OSCE, and the CoE are vital for understanding the human rights situation in self-proclaimed entities. However, all of these organizations, without exception, still encounter difficulties in accessing these territories, subject to arbitrary decisions on the part of the authorities. More than any other organization, the OSCE has the right tools and logistics to gain and facilitate access to these regions and make human rights reporting and monitoring more objective and first-hand. Even if the reports of international organizations have little effect on Abkhazia, Transdniestria, the LPR and the DPR – as these are not parties to international conventions – they serve as important material for human rights defenders protesting against human rights abuses in their communities and for the international community. Nonetheless, the greatest challenge of all in terms of human rights is bringing the perpetrators of violations to justice. This is also an extremely difficult task. It is thus vital to recognize the role of human rights monitoring mechanisms in the judicial efforts of the ECtHR.

The ECtHR has delivered a key judgment in the case of *Ilașcu and Others v. Moldova and Russia*, which has influenced subsequent cases involving human rights violations in secessionist entities. For the first time, the ECtHR clarified jurisdictional issues for human rights violations in self-proclaimed entities, finding the Russian Federation liable for acts committed by separatist forces as a result of its military, economic and political contributions to the creation of a separatist regime within the territory of another state. By supporting the regime, Russia not only contributed to its survival but also impeded all national and international efforts to resolve “frozen conflicts”. By holding Russia legally responsible for human rights violations in a de facto entity, the ECtHR has considerably increased the impact of crucial human rights monitoring and protection mechanisms. The Court took into consideration documents from international organizations including the OSCE, the CPT, the CoE Parliamentary Assembly, the CoE Commissioner

for Human Rights, and the Governing Council of the Inter-Parliamentary Union. This shows the key role played by international human rights monitoring mechanisms in the judicial process.

The continued high-level engagement of heads of state or government, foreign ministers, senior diplomats, and international monitoring mechanisms notwithstanding, these entities continue to violate fundamental human rights, including the right to life, liberty, and security, freedom from torture and ill-treatment, freedom of movement, the right to education, freedom of expression, and the principle of equality and non-discrimination. It is extremely difficult to assess how many human rights violations occur in these entities as international monitoring mechanisms face great difficulties in accessing their territories as a result of restrictions imposed at de facto borders and other policies imposed by the autocratic regimes. Although the UN, the CoE, the OSCE, and other international organizations have developed many vital tools and instruments to defend human rights, these can be extremely difficult to apply in self-proclaimed independent entities, first, because the de facto entities are unrecognized, which means that they cannot become members of these organizations, and second, because of the problem of access. However, international monitoring mechanisms are an important means of human rights advocacy at the local level and in the international community and can help to bring perpetrators of human rights violations from secessionist regions to justice.

Despite the attempts by those responsible for abuses to evade justice, every human being must be able to enjoy human rights no matter where they live, and international monitoring and protection mechanisms are key to keeping the perpetrators of human rights violations accountable.