Vyacheslav Likhachev

Reintegration or Alienation?

Human rights violations in the occupied areas of Donetsk and Luhansk oblasts and territories adjacent to the contact line, in the context of the policy adopted by the Ukrainian authorities

2018
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Introduction

As part of a research project implemented with support from the Federal Foreign Office of Germany and in partnership with DRA e.V., the VOSTOK SOS Charitable Foundation (CF) monitored the human rights situation in the areas of Donetsk and Luhansk oblasts adjacent to the contact line over five months. The project designed jointly by the DRA and VOSTOK SOS examined processes triggered by the adoption of new Ukrainian legislation in early 2018 and its subsequent implementation and, more broadly, political developments in Ukraine. The monitoring effort focused on changes in human rights situation, the humanitarian situation in the territory affected by the armed conflict and adjacent to it, and the lives of civilians on both sides of the contact line. Reviewing the legislation per se was not a priority for the project; instead, its key objective was to document the actual changes observed in areas located in close proximity to the combat zone.

The information was collected by VOSTOK SOS during its working visits to the area of the Joint Forces Operation (JFO), interviews with local civilians and review of public sources. Since the summer of 2014, VOSTOK SOS teams have periodically travelled to the conflict zone to monitor the situation, provide humanitarian, psychological and legal assistance to local communities, run educational projects, support civil society institutions, and document human rights violations and war crimes. These activities have been carried out only in the territories of Donetsk and Luhansk oblasts controlled by the Ukrainian government. It is impossible for VOSTOK SOS or other Ukrainian civil society activists to travel to the occupied territory and work there.

Human rights violations observed in the occupied districts of Donetsk and Luhansk oblasts are addressed by a separate analysis and outlined in a special report prepared as part of the project. However, this report also covers certain aspects of the humanitarian situation in the conflict zone which affect civilians living in the occupied territory. These include, in particular, problems with crossing the contact line, accessing social payments (such as pensions) from the Ukrainian government, having official documents confirmed, ensuring access to education, and more. We interviewed residents of the occupied territories of Donetsk and Luhansk Regions only in areas controlled by the Ukrainian government near the Entry and Exit Checkpoints (EECP) or during phone calls to the VOSTOK SOS Hotline and its legal services which offer advice and assistance with preparing official documents and other matters.

The humanitarian situation in the frontline areas can give the observer an impression of being “frozen.” While residents of regional centers, such as Severodonetsk and Kramatorsk, and other large cities located deeper in the area controlled by Ukraine sometimes make statements to the effect that “life is generally getting better/returning to normal,” the closer to the frontline, the stronger people’s pessimism bordering on despair. Many locals complain that nothing has changed. Statements such as “no one needs us,” “no one remembers about us,” and “the authorities don’t care what is going on here” prevail in virtually all conversations with residents of communities close to the contact line.

Absence of changes in the current context is bad news in and of itself. In the fifth year of the armed conflict, this perception of “stagnation” and a totally abnormal situation becoming “routine” reinforces people’s sense of doom and hopelessness, leaving them drained and incapable of any action beyond physical survival. The socioeconomic consequences of the war, such as disruption of established connections, disintegration of infrastructure and shrinkage of available jobs and self-employment opportunities all produce a cumulative effect, and many crisis manifestations gradually become irreversible. The fact that people cannot see any substantial positive change affects their outlook. Meanwhile, some changes do occur although they are far below expectations. We feel it is important to monitor these changes, however small, analyze them and use what we have learned about the actual situation on the ground to inform our recommendations.

Changes in the humanitarian situation in the conflict zone over the five months covered by this report are largely determined by the pre-existing context and generally follow the trends observed earlier. We find that in some aspects, things have moved forward since early 2018, at least compared to the period of stagnation observed in 2017. The upcoming 2019 parliamentary and presidential elections may have served as a catalyst but this is not the only factor at play.

Law on reintegration

Key policy changes underlying the trends observed over the project period are linked to the adoption of Law No. 2268-III “On the peculiarities of State policy on ensuring Ukraine’s State sovereignty over temporarily occupied territories in Donetsk and Luhansk regions,” widely known by its shorter
but not quite accurate mass media-generated titles of “the law on reintegration of Donbas” and “the law on de-occupation of Donbas.” The law came into effect in February 2018, before the project started, but triggered changes which continued throughout the monitoring period.

Without attempting an in-depth analysis of the law, let us discuss what we believe to be its most important aspects in terms of the humanitarian and human rights situation.

This law is essentially designed to bring the government’s operations in the armed conflict zone under a legal framework. By doing so, it has legitimized post factum certain legally unfounded earlier practices, from using the army in the armed conflict (the Anti-Terrorism Law that serves as the legal basis for the anti-terror operation (ATO) allows using the Armed Forces only in specified cases) to rules for crossing the contact line. Previously, restrictions on crossing the contact line had arbitrarily restricted citizens’ freedom of movement, although this right can only be limited by a law and not by internal regulations of the Security Service of Ukraine.

These aspects of the “law on reintegration” are controversial. On one hand, it is clear that the law restricts human rights or at least creates legal grounds for such restrictions and by doing so, enables violations and abuses. The law grants extensive discretionary powers to the Ukrainian Armed Forces, law enforcement and security agencies but does not balance their new powers by stronger control measures.

In principle, legislative regulation of the state’s policy concerning the armed conflict is a good thing. Expanded powers of the law enforcement officers imply clearly defined rules. From the rule of law perspective, adopting this new legislation has been a logical and appropriate next step. The Joint Forces Operation format replacing the Anti-terrorist Operation is now described in more detail, and the transfer of command functions from the Security Service of Ukraine to the army appears well-justified.

However, according to many critics, the law is largely declarative and comes with a strong political and propaganda component. Ukrainian law now describes Russia as an aggressor and the areas of Donetsk and Luhansk Regions under Russia’s de facto control as an occupied territory. This is logical and true. However, this new wording, albeit adequate to the situation, is “for internal use only,” while nothing has changed from the international law perspective. As for a human rights perspective, there is one important aspect: by this decision, Ukraine has disclaimed any obligation to compensate damages to its citizens affected by the conflict. Previously, the Anti-terrorist Operation regime set out a legal obligation for the state to reimburse people for their destroyed housing. Since Ukraine was not meeting the obligation, this created grounds for legal claims. The new law places the responsibility and obligation to compensate all pecuniary and non-pecuniary damages on the aggressor country. This provision is meaningless from a legal perspective, since Russia cannot be influenced by changing Ukrainian law, nor does it have authority and power for the international community.

But the fact that the Ukrainian government absolves itself of responsibility vis-a-vis its own citizens, including post factum after four years of fighting, can hardly be described as positive. While the Ukrainian government has essentially legitimized the existing situation, its explicitly stated decision to dispense with obligations to its own citizens is indeed a sad fact.

The new law also includes a few undeniably positive provisions, such as recognition of death and birth documents issued by the de facto authorities of the so-called republics. Previously, the Ukrainian government refused to recognize death and birth certificates – or any other documents – originating from the occupied territory and issued by structures calling themselves “Donetsk People’s Republic” and “Luhansk People’s Republic” which are considered terrorist organizations in Ukraine. People wishing to have birth or death certificates recognized in Ukraine had to request a Ukrainian court to confirm the fact of birth or death (which was a meaningless formality anyway since no Ukrainian court could reliably establish an event physically occurring in the occupied territory). The new provision is designed to make it easier for citizens to obtain official Ukrainian documents and strengthen their relationship with the Ukrainian authorities.

**Armed conflict**

Five years into the war, the ongoing fighting is clearly the most serious and immediate threat to civilian life and health and the most significant factor impacting the humanitarian situation in the region.

The beginning of this monitoring period was marked by the worst aggravation of hostilities observed in 2017 and 2018. Between mid-April and early June 2018, mutual shelling in the area along the contact line increased dramatically and seriously affected many nearby communities, causing numerous civilian casualties. In the spring of 2018, an increased intensity of hostilities was reported along nearly the entire contact line, with particularly heavy fighting near Marinka and Avdiivka in Donetsk oblast in the second half of May. Numerous shelling attacks were reported, targeting residential buildings and civilian infrastructure, including schools, life support facilities and more.

The intensification of hostilities, as far as can be judged, coincided with the change of format from the Anti-terrorist Operation to the Joint Forces Operation. A propaganda campaign was launched in the occupied territories to intimidate the public by suggesting an imminent offensive of the Ukrainian army, allegedly put in command of the operation for this very purpose. The illegal armed groups increased their shelling, allegedly to “deter” a Ukrainian offensive. In turn, the Ukrainian armed forces, while they had no intention to violate the Minsk agreements or proceed to liberate the occupied territory, were nonetheless encouraged by the symbolic act which had strengthened the army’s role. It should be admitted that the civilian infrastructure and population in the occupied territories near the contact line also suffered from shelling by the Ukrainian armed forces.

Even after the hostilities gradually subsided in early June, sporadic shelling of frontline settlements has continued even during periods of relative calm.
Liberation of territories

Since early 2018, the Ukrainian authorities (in particular, the ATO/JFO HQ press service) have on many occasions reported having “liberated” a certain territory near the contact line, a settlement or part of it. Started in the winter of 2018 with reports of having taken over the frontline village of Katerynivka in Luhansk Region, this process continued in the so-called gray zone through the spring and summer and involved, in particular, those settlements which (just as Katerynivka) VOSTOK SOS teams and international monitoring missions organized in partnership with the DRA have visited many times over the past three or more years and learned the situation on the ground.

In March, Katerynivka, as a “recently liberated village,” was visited by President Poroshenko. The importance attached to this visit by the presidential press service in terms of media coverage of the Head of State and Commander-in-Chief’s actions is emphasized by the fact that they invited a journalist who had asked an uncomfortable question during the Ukrainian leader’s annual press conference to join the President on this trip.

During the reporting period, in particular in late June, there were reports of Zolote-4 in Luhansk Region having been liberated; this community, like Katerynivka, is located within the administrative boundaries of Zolote settlement. Similarly to Katerynivka, Zolote-4 has consistently been under Ukrainian control since 2015. Reports of Zolote-4 “liberation” were accompanied by a video showing the raising of the Ukrainian flag to the singing of the national anthem by servicemen of the Ukrainian Armed Forces. The Ukrainian flag was also raised in Katerynivka, in a small square in front of the village store, shortly before the President’s visit.

There were also reports of a few settlements liberated in Donetsk Region, but VOSTOK SOS did not have capacity to visit them and see what was really going on there.

As for Katerynivka and Zolote-4, it is quite unclear whether their reported “liberation” was real: whether it was limited to raising the national flag or actually made a difference for the lives of people in the settlements “taken under control by the Armed Forces of Ukraine.”

Despite a propaganda-driven exaggeration of the significance of these developments, there were a few real changes. Oschadbank’s mobile branch began visiting Katerynivka that used to be virtually “cut off” from the rest of the government-controlled territory by the non-functioning Zolote EECP. Access to banking services made it much easier for local pensioners to withdraw money from their pension card accounts to buy groceries. Previously, in order to access their funds, they had to travel to the village of Zolote with no public transport running to Katerynivka then – or even now, as far as we know. In the spring of 2018, a school bus started coming to the village, and it was another important change due to the “liberation” (or perhaps the President’s visit). As far as we know, seven children of school age live in the village, who had been effectively denied any education in the first half of the 2017/2018 school year (and before that), as travelling to school every day was extremely challenging if at all possible. Now, four years into the war, access to education for children in the frontline village has become possible due to its propaganda-hyped “liberation.”

In addition to this, the military reported having provided an internet connection to the village (by running a cable and installing a router in the village club – something that local activists had planned to do but had not had time to raise enough funds), and also having repaired a broken power line. Previously, professional repair and maintenance services were not available in the village, and local residents had to repair broken power lines themselves.

However, the locals also complain about certain negative consequences. In particular, a larger than before number of servicemen are stationed in the village (in addition to bases around it), and not only in houses abandoned by their owners. As a minimum, this can cause damage to property but also trigger fears among local residents concerned about continuous shelling of the village from the occupied territory. Another concern is that the military, due to relocation of their base, do not allow villagers to graze livestock in pastures they have traditionally used (even in the previous years during the armed conflict).

Since we do not have enough information as to how exactly the “liberation” of settlements in Donetsk Region took place, it is better to avoid generalizations, however tempting. But the developments in Katerynivka and Zolote-4 observed in the reporting period suggest that at least in these cases, the concept of “gray zones” may be losing its relevance. This phrase is used to describe territories formally controlled by the Ukrainian Government, physically located between the positions of the Ukrainian Armed Forces and illegal armed groups, and lacking access to any administrative or other public services from the state. Since early 2018, including the reporting period, the state has been “returning” to these territories.

Social rights

There are serious problems with safeguarding the socioeconomic rights of people living in the occupied territories and internally displaced persons (IDPs). In particular, violations include denial of social protection to internally displaced persons and residents of temporarily occupied territories and discrimination in their access to banking services.

The only possibility for residents of the occupied territories to access their pensions is to apply for formal (and often fictitious) registration as IDPs. However, whether their IDP status is real or only formal, these people face additional discriminatory requirements before they can access their pension payments. They must undergo a physical identification procedure at Oschadbank, and if a pensioner is absent from the place of residence where (s)he is officially registered, their pension payments are terminated. Since other Ukrainian pensioners are not required to go through such verification procedures, they can be considered discriminatory. In addition to this, the authorities can terminate the payments arbitrarily, in
contravention of applicable law, based, e.g. on unofficial information from the Security Service of Ukraine alleging that the pensioner in question has returned to his or her permanent residence in the occupied territory.

Courts of various instances, including the Supreme Court, have repeatedly found unlawful and unconstitutional all requirements, including those imposed by the government, for IDPs to undergo additional identity checks to access social payments and pensions, but the practice persists.

Freedom of movement

Freedom of movement is one of the freedoms, which have been limited de facto since the beginning of the conflict, and legislative changes passed early this year created a legal framework for these restrictions.

Specifically, Law No. 2268-III allows restricting the work of any NGOs in areas where operation is ongoing to repel armed aggression and in “security zones.” Following the introduction of the JFO regime in Donetsk and Luhansk oblasts in late April 2018, access regimes – from open to closed for any citizen or organization not involved in the JFO – have been specified, although with a few gaps, for different zones; such zones are color-coded, with green meaning free movement and red meaning no access.

Initially, human rights and humanitarian organizations were concerned whether the new legislation would allow them to continue working in the region. Adding to their concerns was a months-long delay with finalizing a procedure for obtaining permits to work in the JFO area and adopting related policies and instructions. In practice, however, humanitarian organizations have not faced any systemic constraints. In particular, VOSTOK SOS never encountered restrictions to accessing any of the settlements, including those located in the so-called “red zone” (i.e. war zone). There have been a few reports from colleagues working for other organizations of being denied access to certain locations, but only due to increased fighting (the military imposed this type of access restrictions even before the new law). Potentially, the law creates extensive possibilities for restrictions which may hinder, in particular, the work of organizations helping schools. In reality, however, no changes have occurred in this sphere at the moment.

The law generally regulates freedom of movement restrictions. It is true that servicemen of the Armed Forces of Ukraine were able to deny entry to dangerous areas to anyone whom they considered “outsiders,” including NGOs, based on local commanders’ discretionary assessment of shelling intensity. Today, there is a legal basis for such restrictions.

Yet no evidence was found over the five months of monitoring to suggest either increased abuses of their discretionary powers by the military and law enforcement officers, or arbitrary restrictions of access to the conflict zone for humanitarian organizations. This, of course, does not mean that no violations occur. For example, both VOSTOK SOS and our partners at Postup Human Rights Center have received numerous complaints from civilians about long and unmotivated delays at internal checkpoints. However, judging by the information available to us, such violations have not become more frequent and, strictly speaking, they are no longer violations from a legal perspective, since the law enforcement officers do not exceed their new powers. But whether such delays are reasonable and justified is another matter.

The change of format from ATO to JFO also inspired the commandment to streamline the vehicle and ID check procedures at “internal” checkpoints for persons passing through the JFO area. According to reports, the authorities reviewed the checkpoint locations for rationality and moved some of them while disposing of some others. Our monitoring confirmed these reports. Indeed, we found many checkpoints moved to a greater distance from settlements (which is consistent with international humanitarian law) and a few removed altogether. Previously, people had to cross a series of checkpoints on some highways connecting major settlements, which delayed road traffic and was hardly justified by security concerns. The situation improved after the reorganization in late spring and early summer of 2018.

In addition to this, substantial steps were taken to reinforce stationary checkpoints by building shelters to protect against shelling, etc. Previously, there were only military servicemen on duty at checkpoints who were not legally authorized to perform arrests. Today, all areas except those in close proximity to the contact line are guarded by officers of the National Police and National Guard, sometimes jointly with military personnel. Although this rule is not universally observed, the trend is clear and consistent.

This and other examples above demonstrate the commitment of both the country’s leaders and the JFO commandment to bring established practices in the conflict zone under a legal framework. This is definitely a positive and welcome development even though it has certain negative aspects from the human rights perspective. After four years of the state’s sometimes unlawful reactions to the conflict and its consequences, changes that have taken place since the beginning of 2018 are certainly a significant step forward. The only bad thing is that it did not happen before the war entered its fifth year.

As for crossing the contact line, no changes were observed in the situation either during our monitoring or in earlier periods. The five EECPs currently in operation are clearly not sufficient to handle dozens of thousands people crossing the contact line on foot or in vehicles daily. The problem is particularly acute in Luhansk Region with just one EECP that allows only pedestrian crossing. Human rights defenders have criticized the procedure whereby people must seek permission to cross the contact line, as it creates undue difficulties for residents of the occupied territories. Limits imposed on the total value of goods transported into the occupied territory and a list of items permitted for transportation (instead of a limited list of banned items which would make more sense) make matters even worse.

These barriers make it difficult for people in the occupied territories and in democratically-governed Ukraine to maintain social connections.
Access to education

As shown by separate research conducted by VOSTOK SOS during the reporting period, despite certain difficulties, children have access to education in the territory controlled by the Ukrainian Government. The quality and competitiveness as well as the overall conditions of such education can vary greatly depending on the location and other circumstances, such as the intensity of fighting. However, improvements could be noticed even in the five months of monitoring (e.g. the situation in Katerynivka described above).

The central problem with access to education is that the Ukrainian state is reluctant to recognize “educational institutions” operating in the occupied territory.

Conclusions and recommendations

The fighting in eastern Ukraine has continued for a fifth consecutive year. Its direct and indirect negative effects extend across different spheres of public life on both sides of the contact line.

Not limited to an overall difficult socioeconomic situation and security problems, even those people who live in the territory controlled by the Ukrainian government near the contact line are facing barriers and restrictions hindering their access to public administrative services. As for residents of the occupied territory, they face serious and sometimes insurmountable difficulties with applying for and accessing pensions, even after formally receiving the internally displaced person status. Overall, the humanitarian situation in areas close to the frontline remains tense.

The Ukrainian state should consistently and strictly comply with its obligations to its own citizens on both sides of the contact line in accordance with effective law. Death and birth documents issued by the de facto authorities of the occupied territories should be recognized by the Ukrainian government without the need to confirm such documents in court. The Ukrainian government must also revise the current procedure of disbursing pensions which is de facto discriminatory.

In order to maintain humanitarian connections with the people in the occupied territory, the government should once again consider a possibility of opening new EECPs, especially in Luhansk Region where the conditions for crossing the contact line are particularly difficult at the moment.

In terms of access to education, children and adolescents from the occupied territories should be encouraged to enroll in Ukrainian educational institutions. The current practice of providing distance learning opportunities via Ukrainian schools for children on the other side of the contact line should be encouraged and expanded. In addition to this, it may be a good idea to encourage even more Ukrainian universities to offer enrolment opportunities to applicants from the occupied territories.

The Ukrainian government could also create incentives for young teachers coming to work at schools in the government-controlled territory.

The government needs to make sure that the entire range of public administrative services is accessible to people living in the government-controlled territory near the contact line. It is highly desirable, if possible from a security perspective, to ensure that these people can exercise their voting rights both during the national elections to be held next year and during local elections to form fully legitimate local self-government bodies. We strongly believe this to be an essential step for a full integration of citizens living in government-controlled areas of Donetsk and Luhansk Regions into Ukrainian social and political space.

The international community needs to sustain and increase pressure on the Russian Federation as the country, which evidently exercises effective control over the occupied districts of Donetsk and Luhansk Regions in order to achieve a real and long-lasting cease-fire. The fighting that threatens the lives and health of dozens of thousands of people living near the contact line and affects their fundamental human rights must stop.
Ukrainian legislation defines non-government controlled areas of Donetsk and Luhansk oblast as occupied. Not going into discussion about the terminology, which is not the objective of the current report, we follow the approach used in Ukrainian legislation.

The term "demarcation line" is also sometimes used to describe the boundary between the territories controlled by the Ukrainian Government and those Ukrainian territories in which the government is not currently performing its functions. However, the term "contact line" is used in Ukrainian law. The same term ("contact line") is used by international organizations, such as the Office of the UN High Commissioner for Human Rights. Likewise, we consider it appropriate to use the term "contact line."


Along the same lines, shortly before the beginning of this monitoring project and after two years of absence of any government authorities in the village, a new head of the military-civil administration was appointed in Zolote (see https://ua-news.liga.net/politics/news/u-zolotomu-i-katerinivtsi-zyavivsya-noviy-glava-vtsa). Although issues have been raised regarding the new head of administration’s performance (as well as his past), the fact of his appointment, in and of itself, can be seen as a step towards “returning” the government to the “gray zone.”


Reintegration or Alienation?

The report presents the results of the monitoring of the human rights situation in the areas of Donetsk and Luhansk oblasts adjacent to the contact line in May - September 2018. Special attention of the researchers was devoted to the processes triggered by the adoption of new Ukrainian legislation in early 2018 and its subsequent implementation and, more broadly, political developments in Ukraine. The monitoring effort focused on changes in human rights situation, the humanitarian situation in the territory affected by the armed conflict and adjacent to it, and the lives of civilians on both sides of the contact line. Reviewing the legislation per se was not a priority for the project, instead, its key objective was to document the actual changes observed in areas located in close proximity to the combat zone. The report is based on the findings of the field missions, interviews and desk research.

The report is part of the project „Human Rights Monitoring in Eastern Ukraine“ of DRA e.V. Berlin and it is based on background interviews and the analysis of open internet sources.

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