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UKRAINE – RUSSIA: Rule of lawlessness in occupied Crimea and Russia’s Proxy Donbas ‘Republics’

Rule of lawlessness in occupied Crimea and Russia’s Proxy Donbas ‘Republics’

By Halya Coynash for *Human Rights Without Frontiers*

HRWF (21.02.2022) – Russia has wielded full control over Crimea since its invasion and annexation in early 2014. Although Moscow's official narrative avoids any mention of its military seizure of control and claims that 'the Crimean people' voted in a pseudo-referendum to 'join' the Russian Federation, the latter is internationally recognized as being an occupying power whose application of its legislation in Crimea is in violation of the Fourth Geneva Convention. The situation is less clear-cut with respect to the third of the Donbas area of eastern Ukraine falling within the self-proclaimed 'Donetsk and Luhansk people's republics' [D-LPR].

Although Russia has, since 2014, consistently denied responsibility for these armed formations, they are widely viewed as Russian 'proxy republics' and there is substantial evidence that all lines of command lead to Moscow. D-LPR have largely based their formal criminal code, etc. on Russia, and follow the latter in, for example, their ban on the Jehovah's Witnesses and other peaceful religious movements. Although far less is known about the work of the judiciary in D-LPR, the armed formations certainly follow Russia's lead in their widespread use of torture and videoed 'confessions'.

Since 2014, Russia has imprisoned at least 150 Crimean Tatars and other Ukrainians on politically motivated charges. Torture has been used in most of these cases, either directly against the people seized, or against others, in order to obtain false testimony.

Such methods were first seen in May 2014 when Ukrainian filmmaker Oleh Sentsov and three other Crimean opponents of

Russia's occupation were seized and held incommunicado for two weeks, before two of the men were shown on Russian television 'confessing' to a terrorist plot with Sentsov, the supposed ringleader. As soon as Sentsov received access to an independent lawyer, he stated, and later repeated in court, that he had been tortured by Russia's FSB [security service]. He was told that, if he did not give the required 'confession', he would be sentenced to 20 years and "rot" in a Russian prison.

The only 'evidence' in the trial of Sentsov and civic activist Oleksandr Kolchenko was provided by the other two men who were both tried in secret and given 7-year sentences. Both men were brought from prison to confirm this testimony, however only one did so. When it came to Hennady Afanasyev's turn, he took the stand and stated clearly, and in details, how he had been tortured into giving false testimony.

This was ignored by a Russian military court in Rostov which handed down the 20-year sentence against Sentsov, as threatened by the FSB.

That court in particular and others have consistently disregarded complaints of torture and detailed accounts of how electric shocks, beatings and other methods were used to obtain 'confessions'. They have refused to allow evidence confirming such torture and ignore accounts of torture provided during the hearings. This is despite the fact that many political prisoners have, in fact, 'confessed' to activities that they were not later charged with. In March 2021, journalist Yesypenko was seized by the Crimean FSB and held incommunicado for almost a month. During that time, he was shown on Russian-controlled television 'admitting' to

spying for the Ukrainian Security Service. The Crimean 'judge' who, in February 2022, sentenced Yesypenko to six years' imprisonment on different charges disregarded the fact that the journalist had retracted his testimony as obtained through torture, the lack of any other reason why he would have confessed to spying, and clear signs that the charges and evidence were fabricated.

Essentially identical methods have been used by the Donbas proxy republics, with hostages released in prisoner exchanges confirming that they gave testimony under torture. The 'confessions' are largely for propaganda purposes, with even the fact that a hostage was seized prior to, for example, the killing of a militant leader, not preventing him being shown on television 'confessing' to the deed.

It is from released hostages, such as journalist Stanislav Aseyev, that we know about secret prisons, such as Izolyatsia in Donetsk, where both men and women are tortured. While serving primarily to extract 'confessions', former Izolyatsia inmate, Halyna Hayova, believes that the torture was also for the prison staff's 'entertainment'.

There are known to be around 300 Ukrainian hostages or prisoners of war in D-LPR, although the real figure is likely to be much higher. Most of those whose 'sentences' are known were 'convicted' by closed courts of 'spying', although they appear to have been seized for no more than pro-Ukrainian posts on social media. Corrupt motives are also behind much of the hostage-taking, with people imprisoned for ransom or to steal their business. Some relatives have reported difficulty even finding lawyers and, in the vast majority of cases, such lawyers merely enable families to gain contact with the

imprisoned person. There is nothing to suggest that any of the 'trials' are more than rubberstamping of the sentence required. In its scathing assessment of occupied Donbas in 2021, Freedom House[i] noted that *"there are no signs of judicial independence"* with huge sentences passed *"regardless of the evidence. The work of the judiciary is entirely opaque, and outside observers are not known to have attended court hearings."*

One of the key differences in occupied Crimea lies in the role of independent defence lawyers, and it is no accident that the FSB frequently deprive people of access to lawyers and/or put pressure on them to reject their services. State-appointed lawyers serve solely to sign documents and to persuade the person to admit to the charges.

Independent lawyers and civic journalists reporting on political trials, are unable to change essentially predetermined convictions, but they do expose the surreal nature of the charges and the methods used to fabricate such cases. Several lawyers have come under attack, and even been jailed on absurd charges, while over half of the Crimean Tatar political prisoners were themselves reporting on political trials and taking part in peaceful protest.

It is possible that the lawlessness of the charges that people face; the targeting of civic activists; and the methods used are, in fact, deliberate policy. No amount of proof that explosives were planted on a person who openly opposes Russia's occupation will stop the Rostov court from passing a long prison sentence. Such judicial travesties send a chilling message to other Ukrainians to keep their heads low or leave Crimea.

Crimean Tatars thwarted Moscow's attempt to achieve a coup without openly sending in soldiers and they have paid a high price for their pro-Ukrainian position. Almost all the activists who were murdered or disappeared without trace were Crimean Tatar, as are also the majority of the 120 or more Ukrainian political prisoners whom Russia is currently imprisoning. All Russia's prosecutions in occupied Crimea violate international law, but most also contradict fundamental principles of law. Crimean Tatar leader Akhtem Chiygoz and others were imprisoned on surreal charges pertaining to a pre-invasion demonstration over which Russia could have no jurisdiction. Andriy Kolomiyets has served over half of a 10-year sentence, despite being charged with an unprovable event which a Russian-controlled prosecutor claimed had taken place during Euromaidan in Kyiv long before Russia's invasion. Most of the political prisoners are charged with unproven involvement in the peaceful Hizb ut-Tahrir organization which is legal in Ukraine but which the Russian Supreme Court declared 'terrorist' in a suspiciously secret 2003 ruling. Despite the lack of any recognizable crime or evidence, Crimean Muslims, most of them civic journalists and activists, face sentences of up to 20 years, far more than Russian courts hand down in cases of murder.

The 'evidence' in such trials is provided firstly by 'prohibited' religious literature' which the FSB pretend to find during armed searches, which lawyers are prevented from attending. There are usually illicitly taped conversations on religious or political subjects which are sent to the FSB's supposed 'experts'. The latter have been known to assert that words commonly used in Crimean Tatar prove a person's involvement in Hizb ut-Tahrir.

The main source of evidence in these and other political trials is, however, provided by 'anonymous witnesses' whose testimony cannot be verified and who may not have even met the defendants. We know from the testimony of those who refused to collaborate with the FSB about the torture and threats used to get them to provide such fake 'testimony'. This is one of the many ways in which Russian courts demonstrate their bias since they invariably support the prosecutor's insistence on anonymity and regularly disallow questions from the defence aimed at demonstrating the contradictions and flaws in such 'testimony'.

Russia began openly using Hizb ut-Tahrir charges against Crimean Tatars involved in the Crimean Solidarity human rights initiative in 2017, with 25 journalists and civic activists seized during the most notorious operation in March 2019. When such repression did not intimidate other Crimean Tatars, more brutal measures were applied. These have become extremely overt since the arrest of renowned Crimean Tatar leader and journalist Nariman Dzhelyal in early September 2021. The FSB have not even tried to conceal the use of torture as a method of fabricating evidence, and they frequently resort to mass detentions. Russian legislation purportedly allows single-person pickets, yet in Crimea there has been a huge number of detentions and administrative prosecutions for such pickets. In virtually all such cases, the courts provide the rulings demanded by the prosecution.

The situation in D-LPR is more reminiscent of Soviet times, with any 'mass protests', for example, against the OSCE's monitors, being staged events which public sector workers are forced to attend. There have been perhaps two or three protests by miners over payment arrears in occupied Donbas. In one case, several young leaders were taken away and may very

well still be imprisoned.

In both areas, those in control using torture, fabricated prosecutions and other methods of terror enjoy near total impunity.

(*) *Halya Coynash is a member of the Kharkiv Human Rights Protection Group and PEN Ukraine*

[i]

<https://freedomhouse.org/country/eastern-donbas/freedom-world/2021>

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