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HRW.org

Anatoly Vasilievich Matios
Military Prosecutor
Ukraine
By e-mail

December 14, 2014

Dear Anatoly Vasilievich,

I am writing to express my gratitude for the time that you and your staff took to meet with my Human Rights Watch colleagues and me during our visit to Kiev on December 3 and for making your staff available to meet with my colleagues separately on November 17. We appreciate your cooperation and are grateful that you and your office took steps to investigate information that we shared with you during the November meeting. We have taken note of your efforts and your detailed findings. I am writing to encourage you to continue the investigation and to clarify what seems to be a misunderstanding.

With regards to the use of cluster munitions in Donetsk city in early October, it seems that your investigation has focused on the wrong weapon. You told us that your office had checked the inventory of several weapons that are prohibited under the landmine ban treaty, including the 9M27K3 rocket containing PFM-1S antipersonnel mines. Since the inventories of these weapons showed that none had been used since the start of the conflict, you concluded that government forces had not used cluster munitions.

However, Human Rights Watch has never claimed that government forces used the 9M27K3 rocket. Our research shows that the weapons fired at and impacting Donetsk in early October were 9N210 fragmentation submunitions from the 9M27K rocket. Since the 9M27K rocket does not contain anti-personnel mines, it is not prohibited under the landmine treaty. It is, however, prohibited under the cluster munitions treaty, which most countries have joined, and its use in populated areas constitutes an indiscriminate attack because its wide area effect means that it does not distinguish between combatants and civilians.

It is true that the hand-out of the presentation we made on November 17 did not identify in detail the weapon we were discussing. However, the weapon was identified with its technical name in our report of October 20, and the photos we shared during our meeting clearly showed that we were not talking about the 9M27K3. In that light, we would like to make the following suggestions regarding your investigation into use of cluster munitions:

1) The investigation of the allegation of government use of cluster munitions should first and foremost check the inventory of the 9M27K

rocket with 9N128K warheads containing 9N210 submunitions. We hope that your office will undertake this as soon as possible.

2) We believe that the investigation of cluster munition use should include information obtained from speaking with government forces and local residents in and around Novomykhailovka, a village southwest of Donetsk city under government control, from where we believe that the rockets were fired.

3) We urge your office to search for the remnants of the misfired 9M27K rockets that our researchers found in the fields south of this village in mid-October. Please let us know if we can be of help with providing information on the specific location of those remnants.

With regards to the attacks on populated areas with Grad rockets, we hope that you will continue your investigation. We understand that your office faces significant challenges since many of the impact sites are located in rebel-controlled territory, but we believe that there are additional steps that can be taken to investigate these cases. In particular, we believe that your office should be able to conduct a thorough investigation of the July 12 attack on the village of Maryinka since this area is now under the control of government forces.

We were disappointed to hear that you had concluded, on the basis of an examination of records in the ATO center and information from the military, that government forces were not responsible for this attack and other attacks. This appears premature, particularly because the lack of inspection on the ground means the investigation appears not to have established who was responsible for the attacks and where the Grad rockets were fired from, including the attack on Maryinka on July 12 that killed at least six civilians while striking a rebel military base and checkpoint in the same time period.

Finally, we have asked the Ministry of Defense and the SBU to issue clear, specific, and concrete orders to all troops in eastern Ukraine that unguided rockets and cluster munitions should never be used in populated areas, even in the face of fire from populated areas which may itself constitute endangering the civilian population in violation of the Geneva Conventions. We hope that your office agrees that this is what the law requires—and that violations by opposing forces never justify violations by Ukrainian forces. We also hope you will communicate your support for this recommendation to relevant decision-makers.

We are looking forward to receiving more information about your investigations, in particular your findings about the 9M27K rocket inventory as soon as possible, and to continuing our exchange of information.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Kenneth Roth". The signature is written in a cursive, somewhat stylized font.

Kenneth Roth
Executive Director