



Provisional version

The humanitarian concerns with regard to people captured during the war in Ukraine

Report¹

Committee on Migration, Refugees and Displaced Persons

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Summary

Since the annexation of Crimea by the Russian Federation and the beginning of military operations in the eastern territories of Luhansk and Donetsk oblast in Ukraine, hundreds of Ukrainian servicemen and civilians have reportedly been captured or abducted. Some of them have since been released, but many of those who are still in captive are allegedly being held in inhumane conditions and are subject to torture, humiliation, forced labour and other forms of violence.

This report assesses the implementation of one of the cornerstone points of the Minsk agreement on the exchange of prisoners and release of hostages and persons illegally detained in the context of the war in Ukraine. It provides recommendations addressed to all sides of the conflict to speed up this process in compliance with international commitments. It also calls on the Russian Federation to release all Ukrainian prisoners who have been captured and imprisoned in the Russian Federation and in occupied Crimea on politically motivated charges.

The report pays special attention to the needs of the released persons and their families. It encourages the Ukrainian authorities to settle the issue of medical, legal, financial and social assistance to the released. For those people who are still in captivity, the State should provide financial support to their families.

¹ Reference to Committee: Doc. 13829, Reference 4141 of 26 June 2015.

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A. Draft resolution²

1. Since the annexation of Crimea by the Russian Federation and the beginning of military aggression in the eastern territories of Luhansk and Donetsk oblast in Ukraine, hundreds of Ukrainian servicemen and civilians have been reported captured or abducted.

2. According to the Security Service of Ukraine, 3 015 captured persons have been released since April 2014, but 123 persons are still being held captive by the separatists, and 693 are still reported as missing. However these numbers do not include all of the people who have been captured by the separatists on the occupied territories, as their relatives are often afraid to declare their captivity to the Ukrainian authorities.

3. The Parliamentary Assembly is deeply concerned by the numerous reports of inhumane and degrading treatment of captured persons, who are subjected to torture, ill-treatment and sexual violence. Moreover, there is also evidence that people in captivity have been executed by the separatist forces.

4. The Assembly is also very worried with the situation in Crimea where, since the annexation of the peninsula by the Russian Federation, the *de facto* authorities have been using Russian legislation against extremism, separatism and terrorism to detain Crimean-Tatar and Ukrainian activists.

5. Furthermore the Assembly is alarmed by reports from human rights defenders concerning 13 Ukrainian prisoners reportedly being detained by the Russian authorities in violation of international law on allegedly fabricated charges. The most flagrant example is the case of a member of the PACE, Ms Nadiya Savchenko, who was forcibly taken to the Russian Federation and has been illegally held in custody since June 2014 despite, *inter alia*, her enjoying immunity under the General Agreement on Privileges and Immunities of the Council of Europe and its Protocol (ETS Nos. 2 and 10) to which the Russian Federation is a party. Additionally, at least 8 Ukrainian citizens are being held in Crimea on political motivated charges.

6. Moreover the Assembly notes with great concern reported cases of violations of right to liberty and right to fair trial of those who have been detained by Ukrainian Secret Services or by different Ukrainian military battalions, including voluntary battalions. It calls on the Ukrainian authorities to investigate all such cases and to punish the perpetrators in accordance with the relevant Ukrainian legislation.

7. The Assembly believes that without the strong determination of all sides to stop this war, the solution of the problem of captured people during the Russian military aggression in Ukraine is not possible. Therefore, it urges Ukraine, the Russian Federation and the separatist groups controlling the occupied territories of Donetsk and Luhansk region:

7.1. to stop all military actions in the East of Ukraine, to withdraw all weapons and to reinstall a peaceful existence in this region;

7.2. to implement, without further delay, the Minsk agreement especially prioritising the paragraph on the release of all captured persons; their release should not be based upon the fulfilment of other Minsk agreement points.

7.3. to respect the International Humanitarian law and the rights and obligations of the parties in respect of the prisoners of war and the protection of civilians, which are provided for in the Third and Fourth Geneva Convention of 1949 and the two Additional Protocols of 1977 (on international and non-international armed conflicts);

7.4. to provide access to international humanitarian organisations to all detainees without any conditions.

8. The Assembly further urges the authorities of the Russian Federation:

8.1. to release all Ukrainian prisoners captured and imprisoned in the Russian Federation and in annexed Crimea on politically motivated charges including, but not limited to, Mr Athem Çiygöz;

² Draft resolution adopted by the Committee on 22 March 2016.

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8.2. to conduct effective investigations and prosecution of perpetrators in cases of abduction, enforced disappearances, tortures and politically motivated killings of Ukrainian and Crimean-Tatar activists in Crimea;

8.3. to use its influence over the separatist groups, which control the occupied territories in the Donetsk and Luhansk regions, by urging them to release all Ukrainian captives;

8.4. to immediately grant access to international human rights monitoring missions to the territory of Crimea;

8.5. to immediately release Ms Nadiya Savchenko who benefits the diplomatic immunities in accordance with the General Agreement on Privileges and immunities of the Council of Europe and other illegally detained Ukrainian prisoners and allow their return to Ukraine.

9. The Assembly urges the separatist groups, which control the occupied territories in the Donetsk and Luhansk regions:

9.1. to release all captured prisoners and hostages;

9.2. to stop all violations of human rights, in particular the abductions, tortures and politically motivated killings of Ukrainian citizens;

9.3. to cooperate with the Ukrainian side in the coordination of lists and categories of captured people for their exchange in the framework of the Minsk agreement "All to all";

9.4. to grant access to international humanitarian missions to all places of detention of captured persons.

10. The Assembly further urges the Ukrainian authorities:

10.1. as regards legal measures:

10.1.1. to ratify the Rome Statute to allow the International Criminal Court to conduct effective investigations of concrete cases of violations of international humanitarian law during the war in Ukraine;

10.1.2. to conduct effective investigations and prosecution of all perpetrators concerning cases of abduction and taking of captives, as well as concerning cases of extortion, bribery and corruption linked to the liberation of captured persons;

10.1.3. to bring its national legislation, including the Criminal Code of Ukraine and Criminal-Procedure Code into correspondence with the provisions of international criminal law, and in particular to include a status of captured persons, and to declare torture as a serious crime;

10.1.4. to modify the Law "On prevention of persecution and punishment of persons – participants of the events on the territory of Donetsk and Luhansk regions", to ensure that persons who have committed war crimes do not receive amnesty; to ensure that amnesty would only be used after a proper investigation and fair trial;

10.1.5. to elaborate a new law on psychological rehabilitation in close consultation with NGOs and international specialists working in this field, in particular taking into account the needs of victims of military actions;

10.2. as regards assistance to the captured persons and their families:

10.2.1. to elaborate a mechanism of State compensation and support to the families of captured persons and to ensure that the families concerned are informed about the existence of this mechanism;

10.2.2. to ensure that after their liberation, the captured persons are assisted with their return home and provided with medical, social and psychological support;

10.2.3. to introduce a special facilitation procedure for the restoration of documents of released persons;

10.2.4. to provide special trainings to psychologists and other medical staff on how to provide psychological rehabilitation which addresses the specific needs of captured persons and their families;

10.2.5. to consider the appointment of an official representative of the Ukrainian authorities, whose mission would be to coordinate humanitarian and social aid to the civil population in the occupied territories in close cooperation with international humanitarian organisations and to facilitate the process of the exchange of captives.

11. The Assembly calls on the international community to be more involved in the process of the release of captives, in particular it calls on:

11.1. the Organisation for Security and Co-operation in Europe to facilitate negotiations and the settlement of the problem of captured people in the Humanitarian Working group of the Minsk agreement;

11.2. the International Committee of the Red Cross to step up its efforts aimed at obtaining unrestricted access to all persons detained in relation to the war and to monitor their conditions of detention and the treatment afforded to them, in its capacity of neutral intermediary to facilitate operations of simultaneous liberation.

12. The Assembly encourages the European Committee for the prevention of Torture or Degrading Treatment or Punishment to establish a special monitoring mission to check the condition of detention of Ukrainian prisoners detained for political motives in the Russian Federation as well as in Crimea and those illegally held on the territories under the control of the so-called DPR and LPR. It should also monitor the situation of those who were detained by the Ukrainian authorities on the allegations of their involvement in the separatist and terrorist activities during the war in Ukraine.

B. Draft recommendation³

1. The Parliamentary Assembly refers to its Resolution ... (2016) on the humanitarian concerns with regard to captured people during the war in Ukraine.
2. The Assembly recommends that the Committee of Ministers include psychological assistance to the captured persons and their families in the assistance programmes provided in the framework of the implementation of the current Action Plan for Ukraine.
3. It also asks the Committee of Ministers to encourage the Ukrainian and Russian authorities to facilitate the ability of the European Committee for the prevention of Torture or Degrading Treatment or Punishment to conduct their monitoring visits to check the conditions of detention of Ukrainian citizens detained for political motives in the Russian Federation as well as in Crimea and those illegally held in the territories under the control of the so-called DPR and LPR.

³ Draft recommendation adopted by the Committee on 22 March 2016.

C. Explanatory memorandum by Ms Kleinberga, rapporteur

1. Introduction

1. Since the occupation of Crimea by the Russian Federation and the beginning of military operations in the eastern territories of Luhansk and Donetsk oblast in Ukraine, hundreds of Ukrainian servicemen and civilians have been reported captured or abducted.

2. Some of them have been released but many of those who are still captured, are allegedly being held in inhumane conditions and are allegedly subject to torture, humiliation, forced labour and other forms of violence.

3. There are also claims by separatists' *de facto* authorities on the detention by the Ukrainian side of a number of separatist fighters and civilians imprisoned on suspicion of collaboration with separatists, including allegations of their abuse.

4. A number of people are detained in the Russian Federation in connection with the conflict in Ukraine. The Committee on Migration, Refugees and Displaced Persons is particularly concerned with this problem as its member, Ms Nadiya Savchenko, was captured in June 2014 and remains in custody in the Russian Federation despite a number of interventions from the PACE.

5. The humanitarian concerns with regard to captured people during the conflict in Ukraine are closely linked to the problem of missing people during this conflict, as some of the missing are captured by separatists, who refuse to inform the Ukrainian authorities of their whereabouts. When the Ukrainian side is preparing lists for the exchange of prisoners, those missing people whose whereabouts are unknown are included in these lists. The Committee on Migration, Refugees and Displaced Persons has prepared a specific report on "Missing persons during the conflict in Ukraine". Resolution 2067 (2015) and Recommendation 2076 (2015) were adopted in June 2015.

6. In this report, I will deal with both military and civilian captured people on all sides of the conflict.

7. In particular, this report aims to assess the implementation of one of the cornerstone points of the Minsk agreement on the exchange of prisoners and release of hostages and persons illegally detained in the context of the conflict in Ukraine. It contains recommendations addressed to all sides of the conflict to speed up this process in compliance with their international commitments.

8. Furthermore, it will explore the role of different international actors in the process of the protection of captured people and their release, in particular the OSCE and the International Committee of the Red Cross (ICRC), as well as working groups on humanitarian issues created in the framework of the Minsk agreement.

9. During the preparation of this report, I conducted a fact-finding mission to Ukraine on 24-26 November 2015, where I held discussions with the Ukrainian authorities, non-governmental and international organisations working on this issue and a representative of the so-called "Luhansk People's Republic" (LPR) at the Minsk humanitarian group negotiations. I would like to thank the Ukrainian delegation to the PACE and its Secretariat for the organisation of this visit. My special thanks are also addressed to Ms Sasha Romancova, NGO "Centre for Civil Liberties" and Ms Anna Mokrousova, NGO "Blue bird" for the organisation of meetings with non-governmental organisations and the victims of captivity. I am personally grateful for the testimonies I heard from Mr Lev Mamay, Mr Valerij Makeev, Mr Oleksandr Kononov and Mr Serhij Samarskiy on their cruel experiences in captivity.

2. Present situation with regard to captured people during the conflict in Ukraine

10. The earliest cases in the chain of crimes related to unlawful detentions began in late February/early March 2014, when separatists started to take over the local administrations in the east of Ukraine. Different categories of citizens were captured and deprived of their liberty, including military personnel, law enforcement officials, and civilians. These first cases of captivity were characterised by particular cruelty. From that time until now, people have been continuously abducted and illegally detained.⁴

⁴ Surviving Hell: Testimonies of Victims on Places of Illegal detention in Donbas, report of the project "Monitoring Human Rights on the Occupied Territories of Ukraine", Kyiv, 2015.

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11. As reported by the Security Service of Ukraine,⁵ the main official Ukrainian body dealing with the problem of captured people; as of 27 January 2016, 3 015 hostages have been released (Armed Forces of Ukraine – 1 116, National Guard of Ukraine – 264, Ministry of Interior – 112, State Border Service of Ukraine – 26, journalists – 28, voluntary battalions – 66, volunteers – 39, civilians – 1364).

12. In all, 123 persons remain in the captivity of separatist's groups: 77 of them are servicemen and law enforcement officers (Armed Forces of Ukraine – 62, National Guard of Ukraine – 4, State Border Service- 1; Ministry of Interior – 5, voluntary battalions –5); 46 are civilians (among them volunteers –3, journalists – 1).

13. 693 persons are missing: 274 of them are servicemen and law enforcement officers (Armed Forces of Ukraine – 208, National Guard of Ukraine – 18, State Border Service of Ukraine – 5, Ministry of Interior – 29, voluntary battalions – 14); 419 are civilians (volunteers – 13, journalists – 2).

14. However, this number does not include all of those who were captured by separatists in occupied territories, as many people have been afraid to declare their relatives' captivity to the Ukrainian authorities.

15. At the same time, the separatist authorities claim that 458 of their military fighters, 563 “political prisoners” (as they call them) and 199 civilians have been captured by the Ukrainian side. They also claim to have released 317 Ukrainian captives.⁶

16. Different non-governmental organisations are also gathering information on people in captivity. According to the data base of the NGO “Blue bird”, which is collecting information on captured civilians in occupied territory, there are 247 missing persons. Out of this figure, 63 persons have been confirmed as captured by separatists. The “Centre for Civil Liberties” NGO which conducted a special study on the problem of illegal detention in Donbas,⁷ reports that the number of captured persons by separatists varies from 500 to several thousand Ukrainian citizens. The significant difference in the numbers provided by the NGOs in comparison to the official numbers is due to the fact that the NGOs include information on missing civilians who are not officially reported to the authorities in their estimations.

17. As I mentioned above, the problem of captured people is directly linked to the problem of missing persons. People are considered as captured once their captivity is confirmed, while as long as their fate is unknown, they are considered to be “missing”. Unfortunately, there are cases when people who had been considered as “captured” become considered as “missing”. This occurs when captured people are transferred from one place of captivity to another, or worse, when they are abducted from captivity by other separatist groups. In such situations, the information on their fate is lost and Ukrainian authorities include them in the lists of missing persons.

18. In reality, I understood that nobody can present the exact number of captured and missing persons at this stage, when the conflict is still ongoing. During my visit to Severodonetsk, I was informed of a large number of people who were missing in the city (around 1 500), but as nobody has officially claimed their disappearance, they are not registered as missing. And this was a figure from just one city liberated by the Ukrainian army.

19. The information concerning the situation in the occupied territories is unfortunately unavailable, but I have heard several allegations that people have been disappearing there.

2.1 Captured military personnel

⁵ All data provided by the security service of Ukraine dated by the 15 March 2016.

⁶ <http://news24today.info/kiiev-sorval-obmen-plennymi-v-lnr-izmeniv-ego-usloviya-v-odnostoronnem-poryadke--morozova.html>

⁷ Surviving Hell: Testimonies of Victims on Places of Illegal detention in Donbas, report of the project “Monitoring Human Rights on the Occupied Territories of Ukraine”, Kyiv, 2015.

20. During my visit to Kyiv, the Deputy Minister of Defence of Ukraine, Mr Dolgov informed me of 62 military personnel who had been captured by the separatists. During the entire conflict, 988 military personnel had been captured by separatists and so far 926 of them had been liberated.

21. As regards the National Guard; the military troops of the Ministry of Interior, 392 persons had been captured or had disappeared. Furthermore, 210 persons had been liberated and 72 had been found dead.

22. Among the captured military personal, there were also 8 members of the special OSCE monitoring mission, who were liberated shortly after.

2.2 Captured civilians: some examples

23. The separatist forces of the so-called “Luhansk People’s Republic” (LPR) and “Donetsk People’s Republic” (DPR) have captured a number of civilian people, among them journalists, volunteers, and local activists. Some of them were subjected to torture, slavery, humiliation and even rape. The conditions of their captivity were very poor and international organisations had no access to them.

24. In Severodonetsk, I met Mr Oleksandr Kononov. Since the beginning of the war, he and his wife, Viktoria Kononova have been providing voluntary assistance to Ukrainian military forces. It was a very courageous decision as the couple was living in occupied territory and many pro-Ukrainian activists had been killed or captured. They themselves were captured by separatists on their way to the front line with humanitarian assistance. On the first day of their captivity, both of them were subjected to tortures: Viktoria was choked with a plastic bag until she lost consciousness; she was also subjected to electric shock in front of her husband. Oleksandr was beaten and subjected to “Russian roulette”, simulation shooting at his head, which resulted in injury. At the end, the separatists told the couple to say goodbye, pretending to take Viktoria away to be shot. After that Oleksandr was taken to the temporary detention facility of Leninskyi District Police Department of Luhansk, and was detained there. Three days later he learnt that his wife was sitting in the next cell. They were kept in terrible conditions: 15-20 people in a small cell of 4 square metres, men and women together. Altogether they spent three months in captivity. The most shocking thing was that Oleksandr is a veteran of the Afghan war, where he lost his right hand and left leg. I can hardly imagine how he could have survived in these inhumane conditions. Oleksandr and Viktoria were finally liberated during the exchange of prisoners organised by former Afghan soldiers on 28 October 2014.

25. In Crimea, after the occupation of the peninsula by the Russian Federation, the local authorities used Russian legislation against extremism, separatism and terrorism to detain Crimean Tatar and Ukrainian activists. In addition, fabricated criminal proceedings were launched, on alleged crimes which took place before the Russian occupation and outside the territory of Crimea. 8 persons were deprived of their liberty on political motivations and are still being held captive in Crimea: Mr Ahtem Chijzov, Mr Ali Asanov, and Mr Mustafa Degerzhmendzhi were captured during the protest of 26 February 2014 and were accused of rioting; Mr Ruslan Zejtulajev, Mr Rustem Vaitov, Mr Nuri Primov and Mr Refat Sajfulaev, members of the Crimea-Tatar’s religious organisation were detained on the accusation of terrorist activities; Mr Yuri Ilchenko, owner of a private school of foreign languages, who posted an article condemning the Russian occupation of Crimea and the war in Donbas on his internet site, was arrested on the grounds of provocation of hatred. He faces 20 years in prison.

2.3 Separatists detained by Ukrainian authorities

26. Since the beginning of the anti-terrorist operation, the Security Service of Ukraine has arrested 640 persons involved in the terrorist activities of illegal armed groups of the so-called “DPR” and “LPR”. Since March 2014, the SBU has launched 3 000 criminal proceedings concerning crimes against national security and public order, activities of illegal armed groups and terrorist organisations and other crimes related to the dissemination of separatism and terrorism in South-East Ukraine. 911 criminal investigations were finished, of which 529 cases were referred for trial.

27. In 2015, the Security Service launched 2 592 criminal proceedings concerning crimes belonging to one or several of the above mentioned categories, in the framework of which 493 persons were indicted and their cases sent for trial. Through court decisions, 141 persons were arrested on suspicion of having committed such crimes and 856 persons were placed on a list of wanted persons.

28. The separatist authorities claim that around 1 000 people have been detained by the Ukrainian side.

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29. In the recent report on the human rights situation in Ukraine, prepared by the Human Rights Monitoring Mission in Ukraine (HRMMU),⁸ it is stated that they had continued to document the allegations of ill-treatment during the arrest and initial hour-long interrogations that are led by the SBU, as well as of the detention of people in suspected informal detention facilities.

30. There have been cases of detention of different military battalions, including voluntary battalions of the separatist fighters on the front line of the war. In some cases, the detainees were ill-treated by Ukrainian forces and the procedures of detention were violated. Such cases are described in the reports of the office of the United Nations High Commissioner for Human Rights.⁹ According to the Ukrainian authorities, they investigate each of these cases and the perpetrators of these crimes are prosecuted in accordance with the law. A number of cases were opened by police and military authorities into these criminal actions, including abductions and ill treatment of prisoners by members of the volunteer battalion "Aidar", including a criminal case against the former commander of this battalion, Mr Serhij Melnichuk.

31. There have also been cases of pro-separatist civilians captured by the Ukrainian authorities. Some of these people were arrested by the Security Service of Ukraine on the suspicion of their direct support to the separatists. In the majority of cases, they receive the charges of their crimes on the second or third day following their arrest. However, volunteer organisations have registered 10 cases of the detention of people without any charges.

32. The Ukrainian NGO "Center for Civil Liberties" has registered several reports of cases of civilian executions by pro-Ukrainian forces. Most of these cases implicated the involvement of the combatants of volunteer battalions, such as Aidar and Kyiv-2. One of these cases concerned the murder of Mr Volodymyr Nazdrychkin, who was allegedly robbed, tortured and killed right at a check point by three fighters from the Kyiv-2 battalion. His car was destroyed to hide traces of the crime.¹⁰

33. It is of the utmost importance that all of these cases of violation of human rights during the war in Ukraine be investigated by the Ukrainian authorities in detail and that the abusers be held accountable. These investigations should be transparent and the victims or their families should be provided with reparations.

2.4 Ukrainians illegally detained on the territory of the Russian Federation

34. In the Russian Federation, there have been 13 Ukrainian activists illegally detained by the Russian authorities. Many of them were arrested by the officers of the Federal Security Service of the Russian Federation and illegally transferred to Russian territory.

35. Mr Oleg Sentsov, famous Ukrainian film maker, Mr Olexandr Kolchenko, Mr Olexii Cheerniy, and Mr Gennady Afanasyev were accused of terrorist activities on the territory of Crimea and convicted to sentences varying from 7 to 20 years. According to the Ukrainian Ombudsperson, they were subjected to torture during the investigation procedure.¹¹

36. Mr Hayser Dzhemilev, son of Mr Mustafa Dzhemilev who is a member of the PACE and leader of the Crimean-Tatar community in Ukraine, was illegally transferred from Crimea to Russia and sentenced to three and a half years in prison.

37. Mr Viktor Shur, Mr Vlentyn Vyhivskyy and Mr Yuriy Solonenko have been accused of espionage and are facing 20 years of imprisonment.

38. Mr Mykola Karpyuk and Mr Stanislav Klyh were accused of murder during the military actions of the Chechen war. According to the defendants' lawyers, investigators failed to provide evidence of the involvement of either of these men in the military actions in Chechnya.

⁸ Reports on the human rights situation in Ukraine (6 August-15 November 2015), OHCHR, p.10-12

⁹ Reports on the human rights situation in Ukraine (16 February- 15 May 2015, 16 May-15 August 2015, 16 August-15 November 2015), OHCHR

¹⁰ FIDH-CCL - Eastern Ukraine: Civilians caught in the crossfire, October 2015,p.49

¹¹ Annual report of the Ukrainian Parliament Commissioner for Human Rights on the observance of human and citizens' rights and freedoms, Summary 2014 , Kyiv 2015, p. 26.

39. Mr Sergiy Litvinov is facing life imprisonment on the accusation of murder during the military actions in Donbas. He is detained in Rostov.

40. The case of Mr Oleksandr Kostenko created a very dangerous precedent. He was arrested in Crimea in February 2015 and accused “of violent actions on the motives of political and ideological hatred” during Maidan events in 2014. After that he was illegally transferred to the Russian Federation. Thereafter, he was accused by the Russian Federation of actions committed on the territory of Ukraine against Ukrainian citizens.

41. The most flagrant violation of human rights of Ukrainian citizens by the Russian Federation is represented by the case of a member of the PACE, Ms Nadiya Savchenko. Ms Savchenko was fighting as a foot soldier in a volunteer battalion called “Aidar”, and was captured in battle by separatists on 17 June 2014. After that she was forcibly taken to Russia and illegally held in custody. She is accused of acting as an artillery spotter and deliberately calling in and guiding the strike that killed two Russian journalists, Mr Kornelyuk and Mr Voloshin. According to the defence attorneys of Ms Savchenko, they have mobile phone recordings of her, proving that she had been captured an hour before the attack on the journalists.

42. The case of Ms Savchenko became an icon of Ukrainian resistance, especially when Ms Savchenko went on a hunger strike. It became a matter of political negotiations at Minsk negotiations, but unfortunately up to now, the Russian authorities have rejected all calls for her liberation by the international community.

3. Exchanges of captives

43. The issue of the exchange of captives was one of the main items of the Minsk Agreement, where in point 6 it is stated: “Provide release and exchange of all hostages and illegally held persons, based on the principle of “all for all”. This process should have ended— at the latest— on the fifth day after the pull-out (of troops). However, the implementation of this part of the agreement has been blocked.

44. It should be noted that all Ukrainian captives in the Russian Federation are not covered by the Minsk agreement.

45. The Ukrainian authorities claim that the separatists include in their lists the names of prisoners who have been charged for different crimes and are serving their sentences in prisons, or those who have received the charges and are waiting for the sentence of the court. It seriously complicates the exchange process, as to liberate these criminals the courts are obliged to reconsider their charges, which implies the violation of the Ukrainian legislation.

46. The release of captured civilians is further complicated by the fact that the Ukrainian authorities cannot exchange captured fighters for civilians without putting the civilian population of territories under control of the separatists in danger.

47. Two of the most recent exchanges of prisoners took place on 29 October 2015, when 20 prisoners were exchanged (the separatists handed over 8 Ukrainian soldiers and one civilian in exchange for 11 separatists captured during the fighting on 1 December 2015, when Ukrainian officer Mr Andrij Grechanov, head of the Investigation of the 81st brigade of the Ukrainian forces was exchanged for the Russian officer Mr Vladimir Strelkov, captured by the Ukrainian boarder Guard in the Summer of 2015.)

48. There have been cases when the relatives of captives negotiated their release directly with separatists on a private basis. In many cases, they paid money for the freedom of their family. These situations created a worrying risk of extortions and frauds, where bandits and criminal gangs pretending to have news on missing or captured people, would terrorise their families. The most appalling aspect is that some volunteer organisations have accused certain official negotiators of soliciting money from families of captives for facilitating their release.

49. The involvement of controversial personalities such as oligarch Viktor Medvedchuk, who has personal links to President Putin, as a representative of Ukraine in the humanitarian sub-group of the Trilateral Contact Group has been strongly contested by civil society and volunteer organisations dealing with the problem of captives. They accuse him of undermining and slowing down the exchange process.

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50. If, at the beginning of the conflict the exchange process from the separatist's side was barely regulated, now there are two representatives from the Minsk humanitarian group negotiations who are dealing with this issue: Ms Darya Morozova, from the so-called "Donetsk People's Republic DPR" and Ms Olga Kobceva, from the so-called "Luhansk People's Republic, LPR". The "DPR" has even established a committee on prisoner exchange. Nevertheless, there are still exchanges organised by the leaders of separatist groups, without any coordination with the separatists government, and who pursue their own interests.

51. The main problem in the exchange of prisoners is the coordination of the lists and categories of captured people from both sides. This process is also complicated by the absence of clear information on the number of people kept in captivity by the different groups of separatists. I hope that now, when the Centre of the Security Service of Ukraine will be the only body responsible for the release of captured people in Ukraine, the negotiations process in the format "all for all" will be facilitated. The discovery of a solution to release all captives should be a priority for all sides of the conflict.

4. Major concerns linked to the situation of captivity

4.1 Legal issues

52. The issue of exchange of prisoners is not adequately regulated in the national legislation of Ukraine which is understandable, as the country was not prepared for this military conflict. Therefore, apart from the Criminal Procedure Code, which regulates the terms of detention of people suspected of committing crimes, two other normative acts have a direct relation to the problem of captured people. Regrettably, they contain numerous shortcomings in terms of the protection of human rights:

53. The Law "On Amendments to the Law of Ukraine On Combating Terrorism",¹² has a provision on a preventive detention in the area of counter-terrorist operations of persons involved in terrorist activities for a period of more than 72 hours. Such persons can be detained without any court decision for a period of up to 30 days. This means that the law enforcement agencies, without having to open criminal proceedings, can hold a person in detention for one month without any court order for it. Under such conditions, the person has no guarantees against arbitrariness; in particular he or she is deprived of the right to a legal defence, the right against self-incrimination and presumption of innocence.

54. The draft Law "On prevention of persecution and punishment of persons – participants of the events on the territory of Donetsk and Luhansk regions",¹³ the so-called Amnesty Law contains many flaws of procedural and contextual nature. In particular, it does not exclude from its beneficiaries those who have committed torture and ill-treatment. This creates the opportunity for persons who may have committed war crimes and crimes against humanity to avoid their legal responsibility, which is in violation of the basic principle of international humanitarian law and of the Constitution of Ukraine. It should be noted that this law is still awaiting the signature of the President of Ukraine.

55. The entry into force of the Amnesty Law is one of the main preconditions for a large-scale exchange of captives formulated by separatists. The law was adopted by the Parliament of Ukraine in 2014, but has not been signed by the President since then. The implementation of this law is foreseen by the Minsk agreement in paragraph 5 which stipulates: "provide pardon and amnesty by way of enacting a law that forbids persecution and punishment of persons in relation to events that took place in particular departments of Donetsk and Luhansk Oblast of Ukraine".

56. In any case, the negotiators from the separatists' side are not fully satisfied with this law and would like it to be modified. The Ukrainian side claims to be ready to work on the amendments, but the continuing violation of a ceasefire is making the passing of a new draft law unfeasible. Any idea of amnesty and exchange of prisoners "all to all" could be realistic only under the condition of ending all military operations from both sides.

57. With regard to the international humanitarian law, the rights and obligations of the parties in respect of prisoners of war are provided in the Third Geneva Convention of 1949. They can be summarised in one

¹² http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=51738

¹³ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=52183

sentence: "Prisoners should always be treated humanely." Torture and any other cruel treatment of prisoners of war are considered as war crimes.

58. The protection of civilians from being taken hostage in occupied territories and in military zones is regulated by the Fourth Geneva Convention of 1949 and the two Additional Protocols of 1977 (on international and non-international armed conflicts).

59. To summarise, taking into account the current situation of military conflict on its territory, Ukraine should bring its national legislation, including the Criminal Code of Ukraine and Criminal-Procedure Code into correspondence with the provisions of international criminal law. The Amnesty law designed to implement the appropriate items of the Minsk agreements should contain a clear procedure under which those who have committed grave crimes and treason would not receive amnesty.

60. Ukraine should also ratify the Rome Statute to allow the International Criminal Court to conduct effective investigations into concrete cases of violations of international humanitarian law and grave crimes committed during the war in Ukraine. It is also one of the obligations of the Ukrainian authorities to the European Union in accordance with the Association Agreement.

61. I also think that the implementation of paragraph 6 of the Minsk agreement on the release of all prisoners of war and civilian hostages should be a priority objective and should not be linked to the adoption of the Law on Amnesty.

4.2. Inhumane treatment of captives

62. The non-governmental organisation "Centre for Civil Liberties" prepared a report on the hostages, tortures and extrajudicial executions in the Luhansk Region. They interviewed 130 people released from captivity by separatists. Every second civilian hostage reported being tortured by separatists. In more than 40% of cases, the captured people reported being interrogated by Russian military personnel or volunteers. In some cases, the captives had been transported to the territory of the Russian Federation and had been tortured there.

63. During my visit to Ukraine, I personally met four civilian men who had been captured by the separatists. All of them reported being beaten, tortured and subjected to ill-treatment. The most common types of ill-treatment are assaults and beatings. Often, the captured people are beaten several times a day; sometimes the beatings can last for 20 minutes. During the interrogations, separatists often use suffocation. Some captured people are also subjected to torture by electric shock, and imitations of shooting and executions and they report being kept in terrible inhumane conditions, without toilet facilities, little daylight and in very humid buildings, such as cellars.

64. Many captives witnessed executions of other people during their captivity. They also reported that the separatists had detained many local people and even their own fighters for different types of violations of their public order. Those people were also subjected to beatings, torture and executions.

65. One of the cruelest forms of the treatment of captured Ukrainian soldiers is the so-called "parades of war prisoners". This form of treatment targets the media and public to further humiliate, and dishonour the prisoners. The images of these "parades" are broadcast in the local media and on the internet.

66. Both military and civilian captured people testify that there is a practice of forced labour during their detention by the separatists. Captives must dig trenches, rebuild houses, clean premises¹⁴ and streets, and unload the so-called "Russian convoys" of weapons. Some prisoners were also forced to conduct exhumations and bury dead bodies.

67. During my official meetings in Severodonetsk, I was told that during the occupation of this territory, many local citizens were taken by force by separatists for forced labour in mines and on the Russian territory. The whereabouts of 1 500 persons are still unknown.

¹⁴ Surviving hell: testimonies of victims on places of illegal detention in Donbas, Kyiv, 2015, Coalition of Public Organisations and Initiatives "Justice for Peace in Donbas" in cooperation with the Ukrainian Parliament Commissioner for Human Rights with support of Helsinki Foundation for Human Rights (Warsaw), p. 31.

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68. I was informed that the Ukrainian authorities had sent 24 requests for information to other sides of the conflict as regards the conditions of detention of Ukrainian captured persons and places of their detention. No official replies have been received. I think that the European Committee for the Prevention of Torture or Degrading Treatment or Punishment (CPT) should establish a special monitoring mission to check the conditions of detention of Ukrainian prisoners detained in the Russian Federation as well as in Crimea and those illegally held on the territories under the control of the so-called DPR and LPR. It should also monitor the situation of those who were detained by the Ukrainian authorities on the allegations of their involvement in separatist and terrorist activities during the war in Ukraine.

4.3. Assistance to the released persons and their families from the Ukrainian government

69. From the beginning of the conflict, negotiations on the release of captives from the Ukrainian side have been held by different actors and official institutions, but also by volunteers and non-governmental organisations, private actors and the relatives of captives. However, until recently this work was not co-ordinated which is one of the reasons for the great differences in estimates of the number of captives.

70. At governmental level, an Interagency Centre for Assistance in the release of Captives and Hostages and the Search for Missing Persons was established in September 2014 as the main agency responsible for the negotiations for the exchange of captives. However, in practice, this centre was only acting as a hot line centre for the registration of information on captured and missing persons. It was not acting as a coordinative mechanism with other law enforcement agencies and therefore, its work was not effective.

71. Only in October 2015, after the criticism expressed by different NGOs and Assembly recommendations included in Resolution 2067 (2015) on Missing persons during the conflict in Ukraine, did the Ukrainian government reorganise this centre and place it under the auspices of the Security Service of Ukraine, as a new United Centre on coordination of the search and release of illegally deprived of freedom persons, hostages and tracing of the missing persons in the area of anti-terrorist operations. It should bring together the representatives of all law enforcement agencies, but also representatives of NGOs, volunteer organisations and some private persons. This centre should create a list of people captured since 7 April 2014, and it will coordinate the negotiation process on the release of captives and consider citizens' appeals related to this problem.

72. As it was reported during my meetings in the Ministry of Defence and the National Guard of Ukraine, these agencies are represented in the new Centre and have an active role in its work.

73. In the cases of captured militaries, following the report sent by the commander to headquarters on the capture or disappearance of one of its members of staff, an immediate investigation procedure is launched. In accordance with Article 6 of the Law on the social protection of military staff, the family of a captured militaries will receive his monthly salary. The released militaries also have the right to a free psychological rehabilitation, which is guaranteed by the new law, adopted on 3 November 2015 on the changes to the social protection of military servants and their families.

74. Some concrete steps have been initiated by the Ukrainian authorities in cooperation with NGOs in providing direct assistance to captured people. The Ministry of Defence organised several provisions of food and warm clothes to captured people detained by the separatists on occupied territories. The Minister of Interior of Ukraine also took the decision to earmark 10 000 UAH to every person released from captivity.

75. The situation is much more complicated in the case of the capture of a civilian person. As this situation is new from a legal point of view, it is not regulated in the current Ukrainian legislation. In practice, the families of captives should inform the police or the Security Service of Ukraine on the cases of captivity and those authorities should launch a criminal case and investigation procedure on each particular appeal. There is no special status of "captured persons" in Ukrainian legislation, therefore the families of captured have no rights to financial or social assistance. In theory, had the criminal case been started by the prosecution general office, the persons released from captivity could receive the status of victim. The Ministry of Social Policy should provide medical and social assistance to such persons. In practice, the hospitals are overcrowded and the bureaucratic procedure for receiving assistance is so complicated, that people are discouraged from submitting applications.

76. After their release, many former captives face a number of serious problems. Released civilians encounter problems in leaving the military zones, as very often they have no money and their documents have been destroyed by the separatists. The main problem for them is finding a new place to live.

77. All people released from captivity need special psychological assistance and rehabilitation. Unfortunately, Ukraine does not have a sufficient number of qualified medical specialists prepared to work with victims of captivity. There is also a low level of psychological culture in the society: people are not used to psychological consultations and prefer to keep such problems to themselves, being afraid of stigmatisation. However, such non-governmental organisations as “Psychological crisis service”, “Women’s power of Ukraine”, and “Leagues of officers” are services which provide psychological assistance to the victims of military actions. The National Guard of Ukraine and the Ministry of Defence have created specialised departments dealing with psychological assistance and organise trainings for their staff with professionals coming from countries which have had experience of war conflicts. Four centres of psychological rehabilitation have been opened by the Ministry of Defence.

78. The experience of the Vietnam War and other military conflicts has shown that psychological traumas should be treated as soon as possible. If people who were subjected to an “invisible wound” were not immediately treated by professionals, the negative consequences of the trauma (such as violence, drug addiction, alcoholism) could show during the next 20 years.

5. Contribution of civil society and the international community in the release of and assistance to captured persons

5.1. Role of voluntary and non-governmental organisations in the release of and assistance to captured persons

79. From the first days of the conflict, the voluntary and non-governmental organisations, especially those who were based in the newly occupied areas, were actively involved in the search, exchanges and assistance to victims of captivity.

80. Particularly at the beginning of the conflict, a large number of captured people were returned only on the initiative and due to the efforts of volunteers. Some of these volunteers were captured themselves and after their liberation they did all possible to liberate other people in captivity. I would like to endorse these courageous people, who are risking their lives to save the lives of others: Ms Anna Mokrousova, Mr Valerij Makeev, Ms Gajde Rizaeva, Ms Alla Gontar, Ms Oksana Bilozir, and organisations: “Blue Bird”, “Patriot”, “South”, “Centre for liberation of prisoners”, and “Donbas SOS”. Sometimes the separatist’s military commanders are more reluctant to be in contact and negotiate with volunteers than with official authorities. Volunteers were the first people to collect information on captured civilians and make the data base of these captured and missing persons public.

81. NGOs such as “Centre for Civil Liberties”, “Euromajdan SOS”, “Coalition of civil initiatives” and “Justice for peace in Donbas” are doing very important work in the gathering and registration of information on human rights violations in Crimea and on occupied territories. Their reports are being submitted to the International Court of Justice in The Hague, which I hope will establish a special tribunal to hold accountable all those who have committed serious crimes during this conflict.

82. The initial assistance to victims of captivity and their families is also provided by non-governmental organisations, such as “Forpost”, which provides rehabilitation for military personnel, and “Sich”, which ensures social and psychological support to victims of the conflict. Now, after almost two years of the conflict, these organisations are working in close cooperation with governmental bodies, while at the beginning of the conflict they were the only contacts for the families of captured people.

83. To my mind, it is very important that the State recognises the important role played by the non-governmental organisations in the solution of the problem of captured people, and involves them in the elaboration of relevant legislative provisions, administrative procedures and training of the professionals dealing with this problem.

5.2 Assistance from the international organisations

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84. The OSCE mission in Ukraine does not play any role in the Minsk process as regards humanitarian issues. The Authorities of the so-called “LPR” and “DPR” do not agree with the involvement of the OSCE in anything other than security issues. The same is valid for the territory of Crimea; the OSCE has no access there.

85. The ICRC began to be involved in the assistance to people affected by the conflict in Ukraine in spring 2014. The ICRC has visited respectively in 2014 and 2015, 155 and 618 people detained by the Ukrainian authorities in relation to the conflict. Only 4 persons captured and held by separatists have been visited by them at the beginning of 2015.

86. On 29 October 2015 for the first time, the ICRC participated in the release and transfer back to their places of origin of 20 detainees held in connection with the conflict in Ukraine. Acting as a neutral intermediary and in accordance with its mandate, the ICRC facilitated this release and transfer in consultation with all parties.¹⁵ It facilitated a similar operation that allowed for the release and transfer back to their places of origin of 4 detainees on 15 November 2015.

87. The European Court of Human Rights is also dealing with the problem of captured people during the conflict in Ukraine. There are currently three inter-state applications lodged by Ukraine against Russia (Ukraine vs. Russia No 42410/15, No. 20958/14 and No. 43800/14). The most recent case Ukraine vs. Russia No 42410/15 mainly concerns the responsibility of Russia for numerous violations of the European Convention on Human Rights in Crimea and the territories of Donetsk and Luhansk, including cases of the abductions and detentions of opposition activists and members of the Crimean Tatar community, tortures and ill-treatment of Ukrainian civilians and military personnel. The Court invited the Russian Government to submit its observations on this case.

88. More than 200 individual applications lodged by soldiers and/or their relatives following the abduction and subsequent captivity of the soldiers are currently pending before the Court. In more than 100 other cases lodged before the ECHR, the applicants complain that they have been injured or tortured, or that their relatives have been killed or disappeared as a result of the actions of members of the separatist movement or in the course of military actions.¹⁶

89. There is also one individual application, *Savchenko v. Russia* (no. 50171/14) lodged by a member of the PACE, Ms Savchenko, when she was detained by Russian authorities on suspicion of murder and illegal crossing of the Russian border. The Court is awaiting the written observations of the Russian Government. At present, Ms Savchenko is still detained in the Russian Federation and the Russian court has decided to prolong her preventive detention until April 2016.

6. Preliminary conclusions and recommendations

90. The first thing I was told by the local authorities of Severodonetsk, a city liberated from separatists in July 2014, and which is situated 50 km from the front line, is that there is no real cease-fire and the conflict is far from being ended. In fact, what is happening in the East of Ukraine can hardly be called a conflict. For people who live there, persons liberated from captivity, and soldiers who we met at the block posts, these so-called “anti-terrorist operations” have taken on the form of a hidden war. And without the strong determination of all sides to stop this war, to withdraw all weapons, to reinstall a peaceful existence in this region, the solution of the problem of captured people during the conflict in Ukraine is not possible.

91. All sides in this problem, including the Russian Federation should reiterate their commitment to a humane and dignified treatment of people in captivity. They should also provide access to international humanitarian organisations to all detainees without any conditions. It is very important that on the issue of the exchange of prisoners, all sides reinforce their commitments to the Minsk agreement. Amnesty should only be granted to those separatists who have not committed grave crimes and treason.

92. The Russian Federation should use its influence over separatists to urge them to release all captives. It should also release all Ukrainian captives who are detained on their territory.

¹⁵ Ukraine: ICRC facilitates release and transfer of conflict-related detainees, ICRC, News release, 29 October 2015

¹⁶ European Court of Human Rights communicates to Russia new inter-state case concerning events in Crimea and Eastern Ukraine, Press Release issued by the Register of the Court, ECHR 296(2015), 01.10.2015

93. I think that to facilitate negotiations with every side, there should be an official representative of the Ukrainian authorities, whose mission would be to coordinate humanitarian and social help to the civilian population on the occupied territories in close cooperation with international humanitarian organisations and to facilitate the process of the exchange of captives.

94. From a legal point of view, it is very important to investigate all cases of inhumane treatment of captives from all sides of the conflict, and all perpetrators of such crimes should be punished according to the Ukrainian legislation. The Criminal Code of Ukraine should be amended to include a status of captured persons and to declare torture as a serious crime.

95. The international community should be more involved in the process of the release of captives, and as mediators and facilitators of this process. The experience of the ICRC is invaluable in this regard; this organisation should use its mandate to monitor the conditions of detention of captives and to facilitate in its capacity of neutral intermediary their release. The OSCE should also be more actively involved in the negotiations and the settlement of the problem of captured people during the military actions in Ukraine. I think it would be very important to establish a special multilateral commission with the participation of international organisations to create lists of the captives from all sides, and to register all cases of inhumane treatment of captives.

96. After the liberation of captured persons, they should be returned to their homes and provided with first aid, medical, social and psychological assistance. The solution of their legal status is vital for their rehabilitation.

97. The Ukrainian authorities need to, as soon as possible; settle the issue of medical, legal, financial and social assistance to the people liberated from captivity, in particular civilians. For those people who are still in captivity, the State should provide financial assistance to their families. The law enforcement bodies should launch criminal investigations into all cases of abduction and taking of captives, as well as into cases of extortions, bribery and corruption linked to the liberation of captured persons.

98. Very often people who were in captivity have a problem with the restoration of their documents, education diplomas, and driving licences. The Ministry of Internal Affairs of Ukraine should introduce a special facilitation procedure of the restoration of documents in such cases.

99. The new law on psychological rehabilitation should be elaborated in close consultation with NGOs and international specialists working in this field. The adoption of this law should first of all reflect the needs of victims of military actions.

100. Finally, even though we don't know the exact number of people in captivity, we can estimate that the number of released and captured people amounts to several thousand. I believe that it is an obligation of the Ukrainian government and all its related structures to make sure that the suffering of these people is reduced, and that they receive State protection, care and responsibility for their future.