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Military and civilian detainees in Donbas: searching for the efficient mechanism of release



Imprint

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Cover photo: ©Victor Kovalchuk: prisoner-of-war Alexander Lazarenko's reunion with family at the Borispol airport on December 27, 2017

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The bridge in Semenovka near Slavyansk (August 2016).
Restored in December 2016



ТУТ БЫЛ
РУССКИЙ
МИР

1. Introduction

Russia's seizure of Crimea began on February 20, 2014. It became the first precedent of the annexation of the territory in Europe since the Second World war. However, the Russian-Ukrainian armed conflict is not the first such conflict that Russia has been part of since 1945. In particular, the European Court of Human Rights has held in its judgments that Russia exercises effective control over the territory of Transdnistria.

As for Ukraine, before 2014, the country had not had any experience with armed conflicts on its territory, nor had it faced large-scale abductions and unlawful detentions of people in non-government controlled areas, massive use of violence against these people and the need to negotiate their release. But with the start of the Russian-Ukrainian armed conflict in Donbas, these problems became everyday reality for Ukrainian society.

According to the research done by the Media Initiative for Human Rights NGO (hereinafter MIHR), today at least 130 Ukrainian citizens – including military servicemen captured during armed clashes and civilians – are unlawfully detained in the non-government controlled areas of Donetsk and Luhansk Regions (this document will focus on eastern Ukraine, since the situation in occupied Crimea is substantially different and requires a separate discussion). Having fallen into the hands of pro-Russian armed groups (hereinafter illegal armed groups,

or IAGs), both categories of detainees are routinely subjected to torture and ill-treatment, held in inhuman conditions and refused essential medical assistance, while representatives of international human rights missions are not allowed to visit them.

These people's plight has been the focus of the Tripartite Contact Group's negotiations in Minsk. However, this negotiation platform can hardly be described as effective: the most recent large-scale release of people unlawfully held in Donbas occurred 18 months ago, in December 2017. Since then, the process of prisoner release, by and large, has been suspended. While the official Ukrainian side claims having made every effort to secure prisoner release, evidence from human rights groups suggests that many essential steps which depend on the Ukrainian authorities – such as the adoption of required legislation, offering support to families of unlawfully detained persons, designing and implementing rehabilitation programs, adopting a clear-cut policy for government agencies to guide their response and launching a broad international awareness campaign – have not been taken.

In addition to providing an overview of the situation with unlawful detentions in Donbas, this document offers a series of recommendations on what can be done to alleviate the detainees' plight in the current situation.



Entry-exit checkpoint point (EECP) Stanitsa Luhanska

2. Prisoners of war and civilian hostages: terminology

The status of a detained person (hostage or prisoner of war), her rights and protection is related to the status of the conflict – national, or international. According to the Geneva Conventions prisoners of war are usually members of the armed forces of one of the parties to a conflict who fall into the hands of the adverse party in the context of international conflict. Prisoners of war cannot be prosecuted for taking a direct part in hostilities. Their detention is not a form of punishment, but only aims to prevent further participation in the conflict. They must be released and repatriated without delay after the end of hostilities. The detaining power may prosecute them for possible war crimes, but not for acts of violence that are lawful under IHL. Detainees are representatives of the civilian population whose freedom is limited both in the case of international and non-international conflict.

The International Criminal Court (hereinafter ICC) is an institution competent to categorize armed conflicts. Ukraine accepts ICC jurisdiction, although it has yet to ratify the Rome Statute. In its 2017 Report which included findings from a preliminary examination of events in eastern Ukraine, the Office of the Prosecutor of the International Criminal Court indicated that the self-proclaimed "LPR" and "DPR" qualified as parties to a non-international armed conflict. The Office also held that direct military engagement between the respective armed forces of the Russian Federation and Ukraine suggested the existence of an international armed conflict in eastern Ukraine from 14 July 2014, in parallel to the non-international armed conflict.

The rules of international humanitarian law (IHL) are directly applicable, which means that they apply based on the fact that there is an armed confrontation and regardless of whether the states involved recognize it as an armed conflict.

If applied to the current situation in Donbas, this means that:

a) civilians detained by members of illegal armed groups in ORDLO are hostages (IHL explicitly prohibits the taking of civilians as **hostages**);

b) servicemen of all uniformed forces who directly participated in hostilities and were captured must be recognized as **prisoners of war** (combatants) and their rights must be guaranteed (IHL protects POWs against torture and forced labor and specifies their conditions of detention, including medical care).

Detainee status can also be defined in domestic legislation. The most straightforward way of doing so is by implementing the norms of international humanitarian law in domestic legislation. However, the relevant amendments have not yet been adopted in Ukraine.

There are many contradictions between the law of Ukraine and statements of politicians and diplomats. On April 13, 2014 National Security and Defense Council of Ukraine announced the start of the an **anti-terrorist operation** (hereinafter ATO) in eastern Ukraine. Respectively, anti-terrorist legislation was applied and detainees became qualified as hostages.





EECP Stanitsa Luhanska

On January 18, 2018, the Verkhovna Rada approved a draft law on de-occupation of Donbas which referred to Russia as an aggressor and occupant country. Then, on April 30, 2018, President of Ukraine and Armed Forces Supreme Commander Petro Poroshenko signed the Decree "On launching the **operation of Joint Forces** to ensure national security and defense and to rebuff and deter **armed aggression of the Russian Federation** in Donetsk and Luhansk Regions." ATO therefore was effectively reformatted into the Joint Forces Operation (hereinafter JFO), and command was transferred from the Security Service of Ukraine (SSU) to the Joint Operational Headquarters of the Ukrainian Armed Forces. But this has no consequences for the definition of the status of detainees. They have not received defined by law status which would allow application of IHL standards and practice for their protection.

On July 11, 2019 The Parliament of Ukraine adopted in the first reading the draft law "On the legal status and social guarantees for the people detained illegally, hostages, or prisoners on the temporary occupied territories of Ukraine or beyond its borders". The law in case of its final adoption will introduce the category of detained into Ukrainian legislation. Alina Pavliuk, Ukrainian legal consultancy group mentions: "The provisions of the draft law do not fully comply with the norms of Geneva Conventions, the draft law does not stipulate the prisoners of war as a separate category of protected people. The draft law introduces the legal category of people detained on political grounds but the definition of such grounds is very vague. An the main thing – the document does not contain the guarantees regarding the conduct with the detained as it is stipulated by the IHL"¹.

3. Unlawful detentions

The occupation of Crimea by the Russian Federation and Ukraine's loss of control over certain areas of Donetsk and Luhansk Regions (hereinafter ORDLO) as a result of the Russian aggression in the spring of 2014 were accompanied by the establishment of numerous unlawful places of detention in ORDLO: in addition to pre-trial detention centers, offices and basement rooms of administrative buildings and basements of residential buildings were used as temporary holding cells.

The first detainees were local civilians who took part in public rallies to support Ukraine's unity, as well as community activists, journalists and representatives of religious groups. Later on, many people were arrested and held for ransom.² Following the start of active hostilities in Donetsk and Luhansk Regions in May 2014, an increasing number of Ukrainian army servicemen and volunteers were taken prisoner.

Speaking at the Parliamentary Assembly of the Council of Europe on June 26, 2014, Ukrainian President Petro Poroshenko said that IAGs were holding 174 people hostage.³

In July-August, active hostilities began in certain areas of Donetsk and Luhansk Regions such as Savur-Monyla, Stepanivka and near the border with Russia. As a result, hundreds of Ukrainian soldiers fell into the hands of the opposing side. On August 24, 2014, people controlling the situation in Donetsk staged a "Prisoner of war parade" by escorting at least 50 captured Ukrainian soldiers through the city streets.⁴

The number of detainees held by IAGs increased significantly in end-August 2014 after the Ilovaisk tragedy (Donetsk Region) and the battles for Luhansk Airport. According to a September 13, 2014, report from the volunteer-based Center for the Release of Prisoners led by negotiator Vladimir Ruban, 853 persons, military servicemen as well as civilians, were held in captivity by IAGs and another 408 were deemed missing.⁵

At least 16 more servicemen were taken prisoner in January 2015 following the events at Donetsk Airport, and 118 people were captured in February after the fighting in Debaltseve.⁶

Later on, when active hostilities ceased, some servicemen were captured during individual combat missions while the number of civilian detentions increased.

One can extrapolate the scale of unlawful detentions from a report by Ukraine's former representative in the Minsk talks Iryna Geraschenko published by the Voice of Ukraine on May 22, 2019: it says that between 2014 and 2019, the Ukrainian side managed to locate and secure the release of 3,240 prisoners.⁷

According to the report of the UN Human Rights Monitoring Mission in Ukraine covering the period from November 2018 to February 2019, "in territory controlled by 'Donetsk people's republic' and 'Luhansk people's republic', civilians continued to be subjected to 30-day 'administrative arrest' and 'preventive arrest', respectively, which amount to arbitrarily incommunicado detention and may constitute enforced disappearance."⁸

Throughout the conflict, making a reliable estimate of the number of people detained has been difficult for at least two reasons. The first reason is that for a long time Ukraine lacked an agency responsible for keeping these records. It was only since the establishment of the Joint Center for Coordination of Search, Release of Captives, Hostages and Location of Missing Persons in the ATO Area in October 2015 that the SSU has a subdivision tasked with collecting such information. The second reason which mainly concerns civilians is that some families have refused to report such incidents to law enforcement authorities in the government-controlled area due to lack of information or out of fear or other considerations.

As known to MIHR from their own sources, the SSU's official lists include more than two hundred names of hostages (both military and civilian) held by IAGs in certain districts of Donetsk and Luhansk Regions, but the SSU prefers not to publicize this figure.

MIHR keeps its own count of prisoners held captive by IAGs in Donetsk and Luhansk. Based on data obtained by MIHR from various sources, **at least 130 persons**

are detained in penal colonies, pre-trial detention centers (SIZOs) and ad-hoc holding facilities in Donbas. However, MIHR also refrains from making its lists public to avoid putting prisoners' lives and health under threat. Only those cases get published in which the victims' families explicitly request an open discussion of the situation.

Most people unlawfully detained in ORDLO today are civilians.

Of the 130 captives on the MIHR list, 108 (including 21 servicemen and 87 civilians) are held in the uncontrolled area of Donetsk Region, and 22 (including 7 servicemen and 15 civilians) are detained in Luhansk Region.

Of the servicemen, four – Bogdan Pantyushenko, Sergey Glondar, Alexander Korenkov and Roman Onischuk – have been held captive since 2015, and the others since 2017, 2018 and 2019. Most were captured by IAGs during combat missions.

As for the civilians, some have been held hostage since 2016 or perhaps even earlier. They are local residents accused of "espionage in favor of Ukraine" or "subversive activities commissioned by the SSU".

4. Reasons for detention

A review of Ukrainian detainee cases performed for the purposes of this report indicates the following typical reasons for unlawful detention of civilians and military personnel in ORDLO.

In support of our proposed classification, we present each category below along with excerpts from interviews with people who have survived captivity and unlawful detention.

1) Being a member of the Ukrainian Armed Forces or volunteer battalions.

Throughout the conflict, IAGs have captured Ukrainian servicemen to negotiate prisoner swaps and return their members to the uncontrolled territories. In addition to this, detainees are used to undermine the Ukrainian Army's morale.

Vladimir Gunko, volunteer of the Donbas Battalion:

"They captured me as we were retreating from Ilovaisk in end-August 2014. We were told that we must surrender to the Russians. They were wearing uniforms but without insignia. They had Russian weapons. One of their representatives approached us. He said that he was an officer of the Russian army.

He promised that in a week or two they would escort us either to the buffer zone or to the Russian territory where the consul would take care of us. But on the next day, they handed us over to members of the DPR terrorist organization. They lined us up in two ranks, loaded into trucks and drove over fields to Donetsk, beating us on the way. They took away our gold jewelry and watches. [Once we arrived] in the SSU office building in Donetsk, they told us that we were prisoners, filmed us on camera, and beat some of us once again. They took us to the basement that was formerly a bomb shelter".

Gunko was exchanged four months later, in December 2014.

Nikolay Gerasimenko, member of the Kryvbas Battalion:

"On February 9, 2015, some Cossacks stopped our vehicle on the highway outside Logvinovo, not far from Debaltseve. They were about to shoot us on the spot. But suddenly an unknown man appeared who said that the commander already knew that we'd been captured, and [the unknown man] was taking us away with him. We were loaded onto an Ural truck. Taken to a basement. Told that we were in Donetsk. The Cossacks kept interrogating us all the time. I remember February 14, 2015, in particular. On that day, the terrorists learned that formerly I'd been a ranked military officer. They interrogated me using force. I thought it was the last day of my life. When they dragged me back to the cell after the "interrogation," I was unconscious, and other detainees gave me first aid. In the morning, the militants came back to see whether to finish me off or let live".

Gerasimenko was released from captivity two and a half years later, in December 2017.

2) For civilians: showing pro-Ukrainian attitudes and support for the Ukrainian Armed Forces.

Oleksiy Bida from Luhansk, a Maidan participant and current coordinator of the Ukrainian Helsinki Human Rights Union Documentation Center, was captured by IAG members in May 2014:

"In May-June 2014 in Luhansk, people who had some kind of authority and showed a pro-Ukrainian position were the first to be detained. I was seized as an organizer of Euromaidan. This was one of the first cases of people captured in Luhansk. I was released on the next day, because my colleagues and friends reported my detention and made it public. Before me, they detained Timur Yuldashev who had been working to organize a Luhansk-1 volunteer battalion. Together with other volunteers, they were first cordoned off on the premises of a military unit

and then everyone was released in exchange for Yuldashev's arrest. He spent a month in their captivity. Later they searched for others from a list of Luhansk-1 volunteers, and some volunteers were captured and ended up in basements. Apparently, it was the police who had given their names to the militants".

3) Being a civilian suspected of "espionage for the SSU".

Elena Sokolova, a resident of Donetsk:

"On November 12, 2016, my husband Valery Sokolov, aged 58, took our dog for a walk and never came back. Our neighbors found the dog tied to a tree and brought it home. Then masked men in camouflage came to search our apartment and seized the phones, computer, cameras, hunting rifles, and then the car. At the end of December, I learned that Valery was suspected of collaboration with the SSU. I first saw him after his disappearance in end-January 2017. They were taking Valery to a certain location for an "investigative experiment." A hiding place was found outside a fence where, according to the "investigators," my husband kept something that had been brought from the territory controlled by Ukraine. They photographed him at that spot. His "case file" said that during 2015 and 2016, my husband spied on certain vehicles with Russian number plates and filmed them as they entered the Izolyatsia plant where the majority of civilian hostages were held, and then reported this information to the Security Service of Ukraine via the internet or data storage mediums".

Valery Sokolov is still held hostage by IAG members, alongside at least ten other people sentenced by "courts" in the uncontrolled territories to prison terms of 10 to 13 years for "espionage in favor of Ukraine." Some of these civilian hostages are held in pre-trial detention facilities (SIZOs) in Donetsk and Luhansk.

4) Being a civilian or serviceman suspected of "preparation of subversive acts" and "possession of weapons".

5) Violation of curfew, suspicion of alcohol or drug use.

6) Abduction for ransom. Cases have been reported of people paying ransoms ranging from a few thousand dollars to dozens of thousand dollars, which did not always secure prisoner release. Today, prisoners on the exchange list include those who were unable to pay the ransom.

When interviewing families of civilian hostages, MIHR coordinators often hear that within the first month of abduction and sometimes later, unknown people – or even acquaintances – approach the victim's family

demanding a ransom. Thus, according to Donetsk resident Valery Matyushenko's wife, "Just before the December 2017 exchange, I paid an advance of US\$500 for my husband's release. But then they demanded an amount which I was unable to pay".

5. How detainees get captured

Military servicemen are often captured during combat missions such as reconnaissance operations or direct combat clashes. A few cases have been reported of military personnel entering the uncontrolled territory by mistake.

Shortly after a serviceman is captured, IAGs report it in the local press and social media. Usually, they report incorrect information, e.g. by asserting that

- a) they have captured a dangerous subversive group conspiring to kill civilians – or the reverse, that
- b) the captives have deserted the Ukrainian Armed Forces and have chosen to surrender because they are "tired of fighting."

No further information about the detainee is available for the next several days, and 3 to 7 days later, a video made by IAG members is often posted on the web, in which the captured serviceman may say, "the Ukrainian Army is shelling civilians in Donetsk and Luhansk," "a civilian conflict is taking place in Ukraine," "we must stop the war and give autonomy to people living in Donbas." According to former detainees, such "confessions" are made under duress, including psychological pressure and physical violence. Between their capture and filming

of the video, prisoners are beaten. After the video showing the captive serviceman is posted, he is usually transferred to the Donetsk SIZO and held in a cell with other detainees until exchange.

As for civilian residents of uncontrolled territories, they suddenly disappear and their families may be unaware of their whereabouts for a long time. The local so-called law enforcement agencies accept missing person reports and promise to search. Relatives send out requests for information to the authorities operating in the uncontrolled territory, but the response is "such and such is not detained at our facility".

Tatiana Matyushenko, a resident of Kalmius, Donetsk Region:

"On July 15, 2017, my husband and I were supposed to go to a birthday party. I came home from work, but Valery was not there. I tried to call him, but his phone was turned off. My husband did not come back home that evening. As I found out later, Valery was walking in the city's central square, when some unknown people ran up to him, put a bag over her head, grabbed him under his arms and dragged into a vehicle".

To this day, Valery Matyushenko is held in penal colony No. 32 located in the uncontrolled territory in Makiivka.

Elena Dokukina, a resident of Pervomaisk (Luhansk Region):

"On October 30, 2018, a friend of mine Elena Sorokina, a resident of Pervomaisk, Luhansk Region, and owner of a pet store, disappeared under mysterious



Security check at the EECP Novotroitske

circumstances. She stopped responding to calls. We began searching for her, called hospitals and the morgue. It turned out later that she did not show up at her store that morning. On November 2, 2018, Elena, handcuffed and with traces of beating, was brought temporarily to her home. She was escorted by masked men wearing military uniforms".

As of this writing, Elena Sorokina is still detained in the Luhansk SIZO located in ORDLO.

Some civilians were detained while trying to cross checkpoints.

Svetlana Timofeeva, a resident of Donetsk:

"On December 26, 2017, my husband and I were riding a bus from Kiev via the Elenivka EECP to visit my mother in Donetsk. Of all people who were on the bus at that moment, they called out only my husband, telling him to come out. I followed him. A man in camouflage with a gun asked why we were going to Kiev rather than look for work in Donetsk. Then some people from the "ministry of state security" came over. They told us, 'Timofeev Alexander Leonidovich is suspected of having committed a crime'. No one told us exactly what crime".

Alexander Timofeev is still detained in the Donetsk SIZO.

Such arrests result in "criminal proceedings" initiated by the so-called law enforcement agencies in the uncontrolled territories, with "investigations" lasting for 12-24 months. By the end of "pre-trial investigations," the majority of detainees make confessions; very often, people falsely incriminate themselves due to physical violence and psychological pressure. Then their "case files" are sent to "courts" which conduct "hearings" in private. According to reports from detainee relatives, members of the so-called "DPR" and "LPR" law enforcement agencies who may have been around during the "arrest" often serve as "witnesses." "Trials" usually last from one to six months and always result in a "conviction" with "sentences" ranging from 10 to 20 years in prison, sometimes with confiscation of property.

6. Places and conditions of detention

We know about places of unlawful detention from interviews with released prisoners and hostages, as well as from families of those currently detained in ORDLO.

In 2014-2016, hostages were held in unsuitable conditions in ad-hoc "prisons" such as basements of residential homes, office buildings and industrial

facilities. According to Nikolay Gerasimenko mentioned above: "After our arrest in February 2015 and until the end of April 2015, we were held in the basement of a private residential building belonging to the Cossacks of the so-called Don Army. Civilians were also detained there. Then the "DPR" armed groups took over all prisoners by force and placed us, the military, in the SSU building. I don't know what happened to the civilian prisoners. Most detainees were held in the SSU building."

In the summer of 2016, the majority of detainees in the uncontrolled territory of Donetsk Region were transferred to penal colony No. 97 in Makiivka.

As for civilian prisoners in Donetsk, they were held, in particular, at Izolyatsia plant. In late 2017 - early 2018, the majority of prisoners were transferred to the so-called "ministry of state security" detention facility set up on the premises of penal colony No. 97.

According to consistent reports from former hostages and relatives of persons held hostage today, we can assume that in 2016-2017, IAGs made an effort to concentrate all detainees and hostages at facilities belonging to the penitentiary service and located in the uncontrolled territories.

In preparing this report, we collected information about various places of detention, among them:

1) Basements

According to people released from captivity, they were detained in conditions unsuitable for use as long-term living accommodation, including basements and semi-basements with no ventilation or daylight and excessive humidity. Prisoners had to sleep on concrete floor or sometimes on wooden boards or pallets or rags thrown on the floor. On some occasions, no drinking water was available for days.

Oleksiy Kirichenko, volunteer:

"Following my arrest on September 1, 2014, I was taken to the seized building of the Starobeshevsky District Police Station. I was placed in a cell measuring two by three meters, with a bed, a chair and a small table, all bolted to the floor. Thrown upon the bed was a dirty mattress without bedsheets. The cell had a small window with metal bars positioned near the ceiling. They brought me food once or twice a day: canned stuff and biscuits – and drinking water in plastic bottles. The toilet did not function. Asking to be taken to a toilet outside was scary, because they could beat me, so I would hold it in as long as I could. On September 5, 2014, I was severely beaten, including with rifle butts. After the beating, no medical assistance was given".

Prisoners were also detained **in the basement of the Donetsk Court of Appeal** used to accommodate the headquarters of the so-called “ministry of state security” and in the **basement of the Donetsk telecenter** (Donetsk, 61 Kuibyshev Street), hosting the so-called “MSS special department”.

2) The building of the former SSU Regional Division.

Sometimes, detainees and hostages are moved between locations. Thus, Oleksiy Kirichenko mentioned above was soon transferred from the basement to a facility which used to belong to the Ukrainian security services:

“I was placed in a room together with about 75 Ukrainian detainees. It was a semi-basement room, approximately 30 sq. meters. There were bars on the windows, but the windows could be opened for ventilation. The room had no heating. We slept on metal shelves formerly used to store archival documents, each shelf 40 cm high. Mattresses and blankets were provided. We were taken to the toilet on a schedule. There were flasks in the cell for urinating, and we had to take them out and empty them all the time”.

3) Izolyatsia, formerly a plant producing insulation materials.

These buildings were seized in June 2014 and accommodated Vostok Battalion. Later, it was reported that the facilities were used to detain and interrogate detainees and civilian hostages. There were about a hundred prisoners held at the plant in October 2014.

Dmitry Potekhin, blogger (in an interview for *The Fourth Power*):

“These included: a room designed to accommodate 5-6 persons, a cold and wet bomb shelter which held the largest number of prisoners, a basement and the cashier’s office in the factory’s administrative building, as well as a storage room in one of the workshops. The rooms were dirty, lacking ventilation, with high humidity, no possibility to adjust the temperature and no access to daylight, water and toilets. People smoked inside. There was artificial lighting, but the detainees were not allowed to switch it on themselves. There was also a kind of punishment cell, a room without access to sunlight and fresh air”.

According to confidential statements by former civilian hostages interviewed by MIHR, detainees at Izolyatsia were subjected to torture such as electroshock, pulling out teeth without anesthesia, and placing a gas mask over a person’s head and obstructing the air valve.

Valery, a former civilian hostage:

“Everyone ended up making a confession. It did not make sense to resist them. Being a hero would only result in serious injuries. Just describing what people had to go through makes one feel horrible. For example, one [militant] sits on a prisoner’s legs while another [militant] is hitting the soles of the prisoner’s bare feet with a police baton. This leaves you unable to walk. Some detainees were tortured with a stun gun. Do you know what is the most horrible sound at Izolyatsia? It’s the sound of duct tape being unwound. It means that they are about to tape someone’s



Houses in Mariinka



EECP Stanitsa Luhanska

wrists together and use electric shock on him. After that, we would hear the sounds of electric discharge and screams. They used it on their own men and on "spies." This abuse caused casualties."⁹

Since 2016, the practice has emerged of using pre-trial detention centers and penal colonies to hold captives. According to reports by former hostages, solitary confinement was sometimes used.

Today, military and civilian detainees are kept at the following facilities in Donetsk:

- **Donetsk SIZO**
- **Western penal colony No. 97 (Makiivka).** The so-called "MSS SIZO" is based there.
- **Makiivka penal colony No. 32.** At least 11 detainees "convicted" of espionage are held there in a separate barrack.
- **Snizhne penal colony No. 127.** At least two women are detained there.

In Luhansk, prisoners are held at the following facilities:

- **SSU building**
- **Luhansk SIZO**
- **Pre-trial detention center of the Luhansk District Department of Internal Affairs.**

7. Access to detainees and hostages

For five years, IAGs have been denying international humanitarian missions access to detainees and hostages.

The Office of High Commissioner for Human Rights is mandated to visit the places of detention. ICRC is mandated to access places of detention in the international conflict, while during the domestic conflicts such access needs to be negotiated.

On June 13, 2019, Fiona Frazer, Head of the UN Human Rights Monitoring Mission in Ukraine, said as she was presenting the 26th report on the human rights situation in the country that none of the international monitors had regular, unimpeded and confidential access to places of detention in ORDLO. "Such access, in line with international standards, must be provided to international monitors, including the UN Human Rights Office. It would serve as additional protection to all those detained across the contact line. We have reasonable grounds to believe that the denial of such access is intended to prevent the international community from seeing and documenting human rights abuses," she said.¹⁰

MIHR knows from interviews with family members of civilian hostages that OHCHR Monitoring Mission representatives have attended, upon relatives' prior request, some of the closed-door "trials" of civilians "suspected" of espionage or subversive acts. But such visits cannot be qualified as an access, because the

representatives of OHCHR human rights monitoring mission usually have to wait for hours in the corridors while the court hearings are getting delayed only to see a "suspect" briefly before the court hearing starts. Sometimes such contacts don't happen at all because the hearing gets postponed. There is no possibility for confidential discussion.

In September 2018, Coordinator of the OSCE Special Monitoring Mission Toni Frisch was able, for the first time during the conflict, to talk confidentially with Ukrainian servicemen and civilians in Luhansk and Donetsk (in particular, he visited the Luhansk and Donetsk SIZOs and the penal colony in Snizhne). During his next visit to ORDLO in April 2019, Frisch was once again allowed by IAGs to see several detainees and hostages. The ORDLO militants determined whom Frisch could and could not visit. For example, Frisch was not allowed to see Major Sergei Ivanchuk, a Ukrainian hostage held in solitary confinement in the Luhansk SIZO since February 2017.

It is also known to MIHR that shortly before his most recent trip to ORDLO in April 2019, families of detainees and hostages gave Frisch letters to forward to their loved ones. But during his visit, Frisch was not able to deliver the letters to the detainees and handed these letters over to ICRC representatives instead. Some prisoners received their letters in early June 2019. In particular, serviceman Bogdan Pantyushenko received the letter addressed to him at that time.

The ICRC has offices in Luhansk and Donetsk, but its representatives are not allowed to visit hostages and detainees. The only help the ICRC can offer is forwarding parcels and letters via a third party to a limited number of servicemen held at the Donetsk and Luhansk SIZOs. Thus, Victoria, the wife of detainee Bogdan Pantyushenko, said in an interview to MIHR that her husband who was detained at the Donetsk SIZO could receive parcels via the ICRC, while Pantyushenko's cellmate Vladimir Voskoboynik was not allowed to receive parcels from his sister via the ICRC, because the SIZO refused to accept them.

Likewise, most families of hostages are denied access to their loved ones. The relatives of civilians detained on "suspicion" of political offenses are often unable to establish their whereabouts: the so-called law enforcement agencies in the uncontrolled territories tend to withhold such information for months. As a result, the detainees are denied legal assistance at this stage as their families cannot hire a lawyer for them, nor can they send food parcels to their loved one in detention. According to people released from the captivity, during this period of unacknowledged detention the "suspect" is often subjected to ill-treatment and psychological pressure to force a confession.

As for servicemen, their relatives cannot visit them since traveling to the temporarily occupied territories would put their own lives at risk. Volunteers have been involved in the search for missing detainees.

8. Exchange lists

In the framework of the efforts to release Ukrainian citizens illegally detained at ORDLO territory, SSU compiles lists. These lists include servicemen captured by IAGs as well as civilian hostages.

Ukrainian law does not provide a formal procedure whereby families of persons captured by IAGs could request their loved ones' release. Instead, the SSU has developed and used an algorithm which, however, has caused problems.

For someone held captive in ORDLO to be included in prisoner exchange lists, their relatives must file a complaint with the National Police of Ukraine. The police will institute criminal proceedings under Article 146 of the Ukrainian Criminal Code "unlawful deprivation of liberty or abduction of a person," and then the relatives must apply to the SSU, so that its Joint Center may enter the name of the hostage into the database used to compile exchange lists.

Today, the SSU exchange lists include the following categories of captives:

a) **Confirmed by the ORDLO side.** Captives whose detention had been acknowledged by LPR/DPR representatives prior to the December 27, 2017, exchange, although their names had not been included in the lists for that exchange. According to Ukrainian representative in the humanitarian subgroup Valeriya Lutkovska, these are 27 persons in total (15 in Donetsk and 12 in Luhansk).

Some of them are servicemen held captive in ORDLO.

For example, member of the First Armored Brigade **Bogdan Pantyushenko** was captured by IAGs on January 18, 2015, after a fight near Donetsk Airport. For the first three months, he was held in a doghouse and in the basement of a private house, then transferred to an administrative building in the center of Donetsk and later to the penal colony in Makiivka. Today, Pantyushenko is detained at the Donetsk SIZO alongside convicted criminals. He is denied contacts with family.

Pantyushenko's cellmates include special forces servicemen **Sergei Glondar** and **Alexander Korinkov** taken prisoner by IAGs on February 16, 2015, as they were leaving the "Debaltseve Kettle." Glondar's daughter was born while was in captivity; now the child is four and has never seen her dad.

Serviceman **Roman Onischuk** is held in the Luhansk SIZO. He was captured on June 15, 2015, and for the first three years following his capture his family did not know whether he was alive, since IAGs refused to disclose where they were hiding him. It was only after a major release of hostages in December 2017 that witnesses reported having seen Roman among prisoners, and the militants acknowledged his detention.

б) Unconfirmed by the LPR/DPR, but their whereabouts are known to Ukraine.

Why AGs withhold information on their whereabouts is unclear.

They include, e.g., **Volodymyr Voskoboinik**, a serviceman of the 30th Separate Mechanized Brigade, who was captured on May 24, 2018. Now IAGs hold him in the Donetsk SIZO together with seven other persons, of whom three have their detentions confirmed. All of them have repeatedly mentioned Voskoboinik's presence in their letters to relatives and in interviews with OSCE SMM representatives. However, the pro-Russian side refuses to acknowledge Voskoboinik's detention: no parcels or letters to his name are accepted by the SIZO.

Civilian **Valery Matyushenko** is another prisoner whose detention is unconfirmed. According to his wife, Matyushenko was "convicted and sentenced" by a "military tribunal" for "espionage in favor of Ukraine" and is currently "serving a sentence" in penal colony No. 32 in Makiivka, alongside ten other "spies" whose names are known to MIHR. Matyushenko's whereabouts are confirmed by documents which his wife has received from the penal colony. In addition to this, like other alleged "spies," he is allowed visits from family and phone calls. However, there is a risk that Valery Matyushenko, like Voskoboinik, will not be included in the list of persons for the next exchange.

Marina Chuikova, a nurse from Horlivka, is held at the Donetsk SIZO. She was arrested by IAG members on March 19, 2018. According to her sons, she stopped answering her phone. Later they learned that Chuikova had been detained at a checkpoint and accused of "spying for Ukraine."

One of the most egregious cases is the detention of journalist **Stanislav Aseyev** in Donetsk. IAG members kidnapped him in early June 2017 after they learned that he was contributing to Ukrainian mass media while living in government-uncontrolled Donetsk. His kidnappers in Donetsk initially refused to disclose the journalist's whereabouts and later forced him (blackmailed him and threatened to put his mother in prison) to appear on the Rossiya 24 Russian propaganda television channel and confess to working for Ukrainian intelligence; then they returned him to the basement where he had been held before.

It is important to note that the second category of persons on the exchange list includes only those civilian hostages whose families were able to provide the SSU with "documents" from the uncontrolled territories confirming that the person is detained at a particular penal colony or SIZO. In addition to this, their detention is confirmed by video and photo evidence posted by the IAGs on the internet.

в) Unconfirmed by the LPR/DPR, and their whereabouts unknown to Ukraine.

These are people whose detention was reported to the SSU by other hostages' family members or former detainees. There is no other information about their fate besides oral reports.

There are problems with the quality and reliability of the exchange lists. On the one hand, the families of hostages or detainees do not necessarily know who to contact about the exchange and what documents (including papers from the uncontrolled territories) to submit. On the other hand, the SSU as the authority responsible for facilitating the exchange process does not initiate the collection of information on each hostage.

Such uncertainty creates risks – in particular, for the latter two categories of captives to be left out of the exchange lists and to remain in unlawful detention even after an exchange agreement is reached.

9. Complicated negotiations process

С начала вооруженного конфликта на востоке Since the beginning of the armed conflict in eastern Ukraine, prisoner exchange negotiations have been held in various formats: directly between commanders, by the SSU, and by volunteer groups having established contacts with parties in the uncontrolled territory.

On February 12, 2015, in Minsk, representatives of Ukraine, Russia, the self-proclaimed "LPR" and "DPR", as well as the OSCE, signed the Package of Measures for the Implementation of the Minsk Agreements. The document prescribes in paragraph 6 to "**ensure release and exchange of all hostages and unlawfully detained persons, based on the principle 'all for all!'**" This political document was the first and only one to declare Ukraine's and the self-proclaimed republics' intentions to ensure a mutual release of all prisoners. Since that moment, minor local prisoner swaps have officially become impossible.

Despite Russia's de facto direct influence on the negotiation process and on ORDLO representatives' position, the document does not impose any

responsibility on Russia for the process of prisoner release from the occupied territories of Donbas.

In the autumn of 2015, the Joint Center for Coordination of Search, Release of Captives, Hostages and Location of Missing Persons in the ATO Area was established by an order of the SSU head to serve as a coordination and advisory body for the SSU. The Joint Center's responsibilities include making the lists of hostages and facilitating the exchange process.

It was after the Joint Center's establishment that the hostage release negotiations were moved to Minsk, where the issue has since been discussed by the humanitarian subgroup in which Ukraine is represented by the president's envoy and SSU staff.

The Trilateral Contact Group meets in Minsk, on average, once every two months, on the second Wednesday of the month. Exchange of prisoners is discussed at the humanitarian subgroup's sessions. Ukraine is represented in the subgroup by a presidential envoy (before May 2019, Iryna Gerashchenko was the presidential envoy for peaceful settlement in Donetsk and Luhansk; she has since been replaced by Valeriya Lutkovska, former Ombudsperson of the Verkhovna Rada) and SSU staff.

During the group's meetings, the parties negotiate their lists of prisoners for exchange as well as timelines.

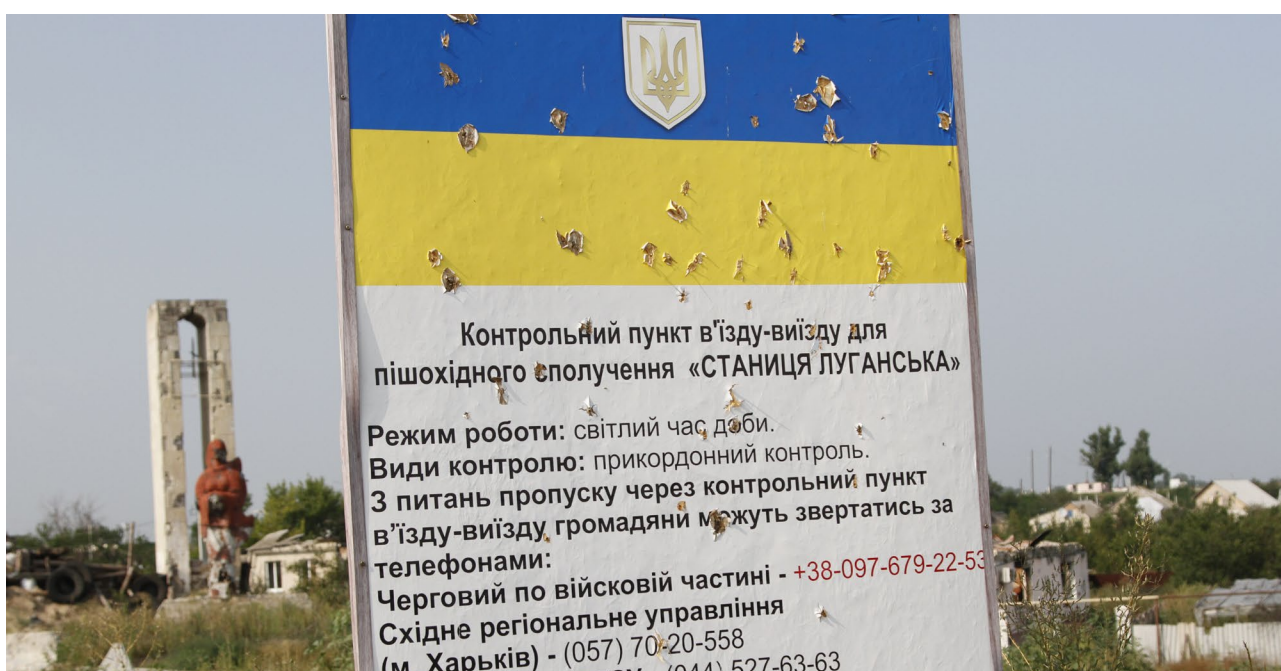
The most recent large-scale exchange took place on December 27, 2017, when Ukraine managed to free 73 people from ORDLO. In exchange, the SSU handed over 233 convicted offenders held in custody over the conflict in Donbas. Both in Ukraine and in Russia, this prisoner release was described as the "first wave" expected to be

followed by the "second wave" before the end of January 2018. But these expectations were frustrated. During the eighteen months that followed, just one Ukrainian serviceman was brought back home: on January 24, 2018, IAG members released serviceman of the 92nd Brigade Roman Savkov because of his serious medical condition. Later, the timeline for the "big exchange" was extended to February 28, 2018, but still did not take place. The negotiations then reached a dead end.

Experts interviewed by MIHR, among them lawyers, human rights defenders, participants in the negotiation process, as well as ex-captives of IAGs and relatives of current prisoners, have mentioned a number of possible reasons why the prisoner exchange negotiations have failed.

The first possible reason is that Ukraine's negotiating group in Minsk was not sufficiently strong. None of the country's representatives: neither the former presidential envoy Iryna Gerashchenko, nor the SSU staff – had prior experience with this type of negotiations. Advice from civil society that Ukraine might benefit from involving reputable international negotiators – and perhaps allowing them to participate remotely rather than travel to Minsk – received no meaningful response from the authorities.

The second reason appears to be excessive politicization of the process. Although exchange and release of prisoners and hostages is clearly a humanitarian mission, all parties, since the start of the Minsk negotiations, have departed from the idea of keeping politics out of it. As a result, prisoner exchange discussions peaked before presidential and parliamentary elections, Russia-hosted sports events, etc.



EECP Stanitsa Luhanska

An example worth mentioning is the unilateral release of four Ukrainian hostages from Donetsk and Luhansk on June 28, 2019, negotiated by Ukrainian politician Viktor Medvedchuk who is close to Russian President Putin and makes no secret of it. In 2015, Medvedchuk was appointed to serve as SSU special representative in the humanitarian subgroup in Minsk but in the winter of 2019, he discontinued his participation in the subgroup and announced that he would negotiate unilateral prisoner release – rather than exchange – on behalf of his own political party (its ratings indicate that it would get partly-list seats in the next parliamentary elections in July 2019). Less than a month before the early parliamentary elections in Ukraine, Medvedchuk announced that his negotiations had succeeded. Although the politician denied any connection between the upcoming elections and the prisoner liberation, its wide coverage in mass media (in particular those controlled by Medvedchuk) would be hard to interpret outside of the political and electoral context.

The third reason is that Russia, acting through LPR/DPR representatives in Minsk, demands the release of a wide range of persons whom Ukraine does not consider to be connected with the conflict – such as former Berkut special police force members suspected of shooting Maidan protesters on February 20, 2014. Their release could cause a controversial reaction in Ukrainian society. Ukraine has so far refused to hand them over to IAG representatives.

The fourth reason is Russia and ORDLO's uncompromising position on a number of issues, such as the following:

1. They insist that Russian citizens arrested in Ukraine since 2014 should be included in the exchange lists. These people were detained in connection with the tragic events in Odesa (where large-scale riots on May 2, 2017, led to some 40 deaths), Kharkiv (where on February 22, 2015, during a rally commemorating Maidan anniversary, two people were killed and two hospitalized, including a 15-year-old), and in ORDLO. On December 27, 2017, the names of several Russian citizens were on the exchange lists, but at the last moment, Ukraine refused to hand them over, citing as a reason that Russians would be exchanged for Ukrainians unlawfully detained in the Russian Federation and in occupied Crimea.

2. They insist that there should be no distinction among the persons listed based on whether they committed serious or minor offences, but all identified prisoners on one side should be exchanged for all identified prisoners on the other side without exception.

As mentioned above, there have been changes in the humanitarian subgroup in Minsk, with Valeriya Lutkovska replacing Iryna Gerashchenko. Lutkovska has already participated in several TCG meetings as Ukraine's representative. According to unofficial information obtained from MIHR sources, now both sides are finalizing their respective exchange lists. Lutkovska has refused to give comments to the media or make official statements about any interim results of the process, apparently in an attempt to avoid excessive politicization. However, no common ground has been reached so far on how to respond to ORDLO's demands for release of Russian citizens and persons unrelated to the conflict in exchange for hostages and detainees held in Donbas.



EECP Stanitsa Luhanska, the road to the bridge, the repair of which is blocked by representatives of the ORDLO

10. Recommendations

To the Government and Parliament of Ukraine:

1. Develop a comprehensive state strategy for the return of Ukrainian citizens detained in connection with the conflict, including those detained on the territory of the ORDLO, as well as those illegally prosecuted in occupied Crimea as well as in the Russian Federation.
2. Regulate the status of illegally detained persons on the legislative level. Namely, the Verkhovna Rada of Ukraine should adopt the draft law No. 8205 "On the legal status and social guarantees of persons illegally deprived of their liberty, hostages, or convicted in the temporarily occupied territories of Ukraine and abroad", having preliminarily finalized the text of the draft in consultations with the civil society and human rights organisations.
3. Continue verification and specification of the lists of unlawfully detained persons by setting up a working group of representatives of relevant government authorities and NGOs, as well as volunteers and family members of people unlawfully detained in the uncontrolled territories.
4. Establish an institution of the Presidential Commissioner for Humanitarian Affairs and an Interdepartmental Coordination Council to coordinate the efforts of governmental and non-governmental actors aimed at the release of illegally detained persons (both those held in ORDLO and those held in occupied Crimea and the Russian Federation).
5. The Ukrainian Ministry of Foreign Affairs should ensure, in cooperation with non-governmental organizations, that an international information and advocacy campaign is conducted consistently to keep the issue of illegally detained in ORDLO on the international agenda.
6. Involve reputable international negotiators experienced in the work on the release of prisoners of war and hostages.

For the international partners:

1. To the Parliamentary Assembly of the Council of Europe, the OSCE Parliamentary Assembly, the UN Human Rights Council: initiate resolutions (as well as other available mechanisms, such as special rapporteurs, working groups) on the current state of affairs with illegally detained persons in the eastern Ukraine. In particular, to demand, in addition to immediate and unconditional release, access to prisoners and hostages by representatives of international humanitarian organizations and monitoring missions.
2. To the European Parliament: to initiate regular consideration of the current state of affairs with illegally detained persons in the eastern Ukraine within the framework of the new convocation of the European Parliament, further developing the resolutions adopted earlier. For instance, in the next resolutions the names of the detainees need to be specified, including the names of female detainees and journalists.
3. To the EU High Representative for Foreign Affairs and Security Policy/Vice-President of the European Commission: consider the possibility of implementing the EP resolution on the establishment of the EU Special Representative for Donbas. The implementation of this recommendation would make it possible to keep the topic of hostages and prisoners in the focus of the EU's attention.
4. To the Parliaments and civil societies of the EU Member States: organize hearings on the current state of affairs with illegally detained persons in the eastern Ukraine at the level of other national parliaments of the EU countries.
5. To EU and member states representatives: During all interactions with representatives of the Russian Federation, raise the issue of granting immunity to a corps of independent lawyers in the non-government controlled territories and giving them access to new detainees immediately after their capture as well as to those detained earlier.
6. To the member States of the European Union: support the initiative of the Government of the Netherlands to adopt the Global Human Rights Act at the EU level, providing for the implementation of personal sanctions at the EU level against persons involved in gross human rights violations.

Endnotes

- 1 Interview of MIPL with Alina Pavliuk
- 2 Here is just one example: on June 30, 2017, a local jewelry business owner was arrested in Luhansk Region. MIHR interviewed his acquaintance, employee of the Kharkiv Human Rights group Yanina Smelyanskaya who said, "During Roman's detention, his parents were approached numerous times with demands to pay for their son's release. They paid at least US\$20,000, but Roman was not released."
- 3 <http://uacrisis.org/ua/4987-speech-president-ukraine-petro-poroshenko-pace-session>
- 4 <https://www.pravda.com.ua/news/2014/08/24/7035673/>
- 5 <https://www.facebook.com/CentrZvlnennya/posts/769983983071171>
- 6 https://censor.net.ua/resonance/325541/poteri_ukrainskih_voinov_v_bitve_na_debaltsevskoyi_duge_24_yanvary_18_fevralya_2015_goda
- 7 <http://www.golos.com.ua/article/317309>
- 8 <https://www.ohchr.org/Documents/Countries/UA/ReportUkraine16Nov2018-15Feb2019.pdf>
- 9 This testimony was shared with MIHR by former civilian hostage Valery. We cannot disclose his last name: although he has been living in Kiev since the 2017 exchange, his relatives are still in the occupied territories and he is concerned for their safety.
- 10 <https://www.youtube.com/watch?v=Xc7aANXVmqQ>



Along the road to EECF Stanitsa Luhanska



Houses in Avdiivka affected by the conflict



Military and civilian detainees in Donbas: searching for the efficient mechanism of release

According to the research done by the Media Initiative for Human Rights NGO (hereinafter MIHR), today at least 130 Ukrainian citizens – including military servicemen captured during armed clashes and civilians – are unlawfully detained in the non-government controlled areas of Donetsk and Luhansk Regions (this document will focus on eastern Ukraine, since the situation in occupied Crimea is substantially different and requires a separate discussion). Having fallen into the hands of pro-Russian armed groups (hereinafter illegal armed groups, or IAGs), both categories of detainees are routinely subjected to torture and ill-treatment, held in inhuman conditions and refused essential medical assistance, while representatives of international human rights missions are not allowed to visit them.

These people's plight has been the focus of the Tripartite Contact Group's negotiations in Minsk. However, this negotiation platform can hardly be described as effective: the most recent large-scale release of people unlawfully held in Donbas occurred 18 months ago, in December 2017. Since then, the process of prisoner release, by and large, has been suspended. While the official Ukrainian side claims having made every effort to secure prisoner release, evidence from human rights groups suggests that many essential steps which depend on the Ukrainian authorities – such as the adoption of required legislation, offering support to families of unlawfully detained persons, designing and implementing rehabilitation programs, adopting a clear-cut policy for government agencies to guide their response and launching a broad international awareness campaign – have not been taken.

In addition to providing an overview of the situation with unlawful detentions in Donbas, this document offers a series of recommendations on what can be done to alleviate the detainees' plight in the current situation.

The report is conducted in the framework of the DRA project "Human Rights Monitoring in Eastern Ukraine".

