



Concept Note on the State Strategy as to the Return of Ukrainian Citizens Currently under Control of the Russian Federation and/or Its Agents as a Result of the Armed Conflict

I. Introduction.

Since the beginning of the armed conflict initiated by the Russian Federation (hereafter “RF”), a significant number of Ukrainian citizens have been held against their will on the territory of the Russian Federation and its occupied territories (Crimea, Donetsk and Lughansk regions)¹. Ukraine, as a party to the international armed conflict also keeps in custody prisoners of war from among the Armed Forces of the Russian Federation, as well as persons from illegal armed formations of the so called Donetsk/ Lughansk Peoples’ Republics (hereafter - “LPR/DPR”), over which the Russian Federation (hereinafter - Russia) exercises effective or overall control². The detainees are held incommunicado and are subjected to abuse and ill-treatment by the warring sides³.

Based on the relevant principles of international law, Ukraine considers that RF, as a party to the conflict, the state in occupation, and having declared jurisdiction over them is responsible for the enforcement of humanitarian law and the protection of human rights on the occupied territories of the Autonomous Republic of Crimea and the city of Sevastopol. Being the state exercising overall and effective control over the illegal armed formations of the so called “LPR/DPR.”, the RF also is similarly responsible in the Donetsk and Luhansk oblasts.

Determining the resolution of humanitarian issues (such as prisoner exchanges) dependent upon the resolution of political and military issues, as proposed by the Minsk Format of Negotiations undermines the protection of human rights and the enforcement of international humanitarian law (IHL). In relation to prisoners of war these risks have materialized: prisoners of war have become bargaining chips for a range of political and economic concessions that lead to them being held hostages of the warring parties. According to customary international law, these ‘trades’ and detentions may amount to war crimes and those complicit may be responsible as perpetrators or facilitators.

On the other hand, the fact that Ukrainian authorities treat citizens in the occupied Crimean Peninsula and the East as collaborators, also deprives them of the enjoyment of a range of civil, political, social, economic and cultural rights, strengthens the anti-Ukrainian sentiment, and otherwise discredits Ukraine in the eyes of the guarantor States and international organisations.

Ukraine and Russia’s failure to comply with IHL, as parties to the international armed conflict, including the politicisation of prisoner exchanges leads to an increase in enforced disappearances, torture, illegal detentions, and more misery. The conflict continues to cost lives.

However, Ukraine has no legislation in place to address the situation of an armed conflict,

¹ Number of people detained in Donbas region – 118, Crimea and RF – 44 persons (valid figures at the time of drafting this Concept Note)

² Human Rights Watch, *Ukraine: Armed Conflict - Related Abuse in Detention*, Report, 25 January 2017: <https://www.hrw.org/news/2017/01/25/ukraine-armed-conflict-related-abuse-detention>

³ *Ibid*

which would facilitate the release and repatriation of Ukrainian citizens, search for the missing, lead to the cessation of political persecution, or ensure punishment for crimes against humanity and war crimes.

Ukraine needs to adopt a national conflict settlement strategy (a plan), which should include, *inter alia*, a state consolidated policy on all persons who have the status of “protected persons” under IHL. The policy should be based on the Geneva Conventions and the Hague Regulations, take into account the provisions of the model law of the International Committee of the Red Cross regarding missing persons as well as the norms of international human rights law (IHRL), including but not limited to the International Covenant on Civil and Political Rights, the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter the ECHR), and the International Convention for the Protection of All Persons from Enforced Disappearance, and include best post-conflict resolution practices.

II. Principles Governing the Implementation of the Strategy

This Concept Note aims to define the principles and rules that should underpin any State strategy aimed at returning citizens of Ukraine currently detained by the Russian Federation (“prisoner swaps”). It is aimed at all competent authorities and concerned stakeholders (government, civil society organizations, international human rights organizations, etc.) to ensure the protection of human rights and fundamental freedoms, enforce IHL and otherwise create a framework for the detention, exchange and security of those detained in connection with the occupation/armed conflict. The State strategy should be seen as part of the overall State policy on human rights during an armed conflict and the post-conflict period.

Bearing in mind the specific nature of the occupied Crimean Peninsula, jurisdiction over which is recognized by the Russian state, and a specific nature of the situation in the so called “LPR/DPR”, where Russia exercises overall and effective control, which is currently under consideration by various judicial bodies (the ECtHR, the ICC and the ICJ), the ensuing state policy shall be based on principles of IHL and IHRL that ensure, in particular but not limited to, compliance with following **principles**:

- 1) separation of humanitarian, military and political issues. This strategy defines the principles of the state policy exclusively from the humanitarian and legal viewpoint;
- 2) state adherence to its positive obligations under the Constitution of Ukraine and relevant international conventions (the ECHR, the ICCPR and the Geneva Conventions);
- 3) participation of the guarantor states (third – party states) in facilitating the implementation of the new format of negotiations in the international arena;
- 4) adherence to the principles of transitional justice (in particular justice, truth, reasonableness, clarity, openness, transparency);

and priorities:

- 1) human rights - in accordance with the standards set forth in the ECHR and ICCPR;
- 2) humanity (in accordance with standards set forth in the ECHR, ICCPR and the Geneva Conventions III and IV and customary international law);
- 3) justice (in accordance with the standards set forth in Article 6 of the ECHR);
- 4) accuracy of information (which means that the information received as to the protected persons must be verified by competent authorities before the State takes any actions);
- 5) legitimacy (state and local authorities and their officials act solely on the grounds, within the powers and in the manner envisaged by the Constitution and laws of Ukraine, and in accordance with international conventions and other agreements, which Ukraine is a party to);
- 6) non-interference of unauthorized persons with negotiations (which means that only competent persons may be authorized to participate in negotiations. Competence of “negotiators” is assessed at a selection stage by “expert” peers and civil society organisations as observers);
- 7) impartiality of persons during negotiations (which means that those involved in the

process of negotiations must be impartial, independent and not interested in anything other than professional, efficient and effective negotiations aimed solely at the release of persons in compliance with their rights and freedoms);

8) non-interference with the rights of citizens' in the occupied territory or otherwise in a conflict zone (which means that under international conventions such as the ECHR, the Geneva Conventions, a State must make every effort in order to protect the rights and freedoms of citizens, on the occupied territory, in the conflict zone or in captivity, and, in any event refrain from causing their deterioration);

9) voluntariness when it comes to the return of citizens regarding exchange, extradition or transfer - citizens cannot be exchanged or transferred against their will.

III. Legislative Framework

In order for the state of Ukraine to be able to ensure the rights of its citizens are adhered while they are in detention and their safe return by way of prisoner swaps, it must first ensure that there is an appropriate legislative framework in place. Firstly, Ukraine must adopt the law that will provide for the conflict qualification and secondly, it must define status of the Ukrainian citizens currently under the control of the RF.

Conflict Qualification and the Applicable Law

Annexation of the Crimean Peninsula by the RF has preliminarily been qualified by the ICC Prosecutor⁴. There can be little doubt that this preliminary qualification is a correct statement of the law.

Qualification of the conflict in the East of Ukraine as non-international (civil war) is to the Russia's advantage. Russia's propaganda against the Ukrainian Government is premised on this mischaracterization and the Ukrainian government does little to oppose this view.

Moreover, the inaccurate qualification of the armed conflict in the East of Ukraine as an "anti-terrorist operation" by the Ukrainian authorities undermines the effective enforcement of IHL and IHRL standards, restricts the tools for the protection of state interests (such as, sovereignty and territorial integrity) and undermines the life and well being of its citizens.

The Parliamentary Assembly of the Council of Europe (hereafter – "PACE") recognised that Russia has partial effective control over the so-called "LPR/DPR" and that the conflict has two dimensions - both international and non-international⁵. The temporary occupation of Crimea by Russia resulted from the international armed conflict. The International Committee of the Red Cross (hereafter – "the ICRC") has identified both as war and not "ATO".⁶

Despite the actions of Russia on the occupied Crimean Peninsula and specific occupied territories of Donetsk and Luhansk oblasts, the decisions of international organisations, Ukraine still avoids defining the conflict according to international law.

Proper internal conflict qualification is required primarily to apply proper transitional justice mechanisms, as well as to send a powerful message for the state supporters of Ukraine that it intends to solve any on-going issues through the application of IHL standards, as well as IHRL principles.

Ukraine and Russia, as parties to the international armed conflict, must fulfill their obligations under IHL relevant to international or non-international armed conflicts, as well as the prevailing IHRL rules.

Failure to fulfill their obligations must entail responsibility on both parts. Ukraine shall seek to hold the aggressor country responsible and recognize and accept the fact that it will be

⁴ The Office of the Prosecutor, The International Criminal Court, *Report on Preliminary Examination Activities 2016*, 14 November 2016, pp 33-43

⁵ Parliamentary Assambly of Council of Europe, *Resolution 2133 Legal remedies for human rights violations on the Ukrainian territories outside the control of the Ukrainian authorities*, 2016.

⁶ Miles T., *Ukraine War Crimes Trials a Step Closer after Red Cross Assessment*, Reuters, 22 July 2014

responsible for any failure on its part. Ukraine must ensure fulfillment of its positive obligations under international law even if it does not exercise effective control over those specific territories. The development and implementation of the legal framework shall be based on the following principles:

- legal certainty, clarity and specificity of the law;
- punishment exclusively on the basis of the law;
- inadmissibility of prosecution of people who work/worked in the structures created by the Occupying Power, except those who took part or contributed to the occupation of the territory of Ukraine, or tolerated criminal offences that resulted in violations of human rights and/or international humanitarian law

Status of Persons in the Conflict.

According to the Geneva Conventions “protected persons” in conflict are children, civilians, missing persons, prisoners of war and detainees, refugees and displaced persons, women, wounded and sick under power of the Russian Federation in the territory of the occupied Crimean Peninsula and certain occupied territories of Donetsk and Luhansk oblasts, as well as persons forcibly transferred to Russia.

As regards Ukrainian citizens imprisoned on politically motivated charges in Russia and Crimea in the course of the armed conflict should also be included in the category of protected persons. Imprisoning Ukrainian citizens on trumped up charges and using them as pawns in pursuance of its political and economic interests has been one of the unconventional methods of warfare used by the RF against Ukraine in the current armed conflict. Those who are being detained/imprisoned by the RF authorities might not necessarily have an articulated social and political position, nor are they prosecuted by the RF as representatives of a certain minority, instead they are used as a tool for “propaganda of justice” and/or legitimization of prosecution of representatives of the Ukrainian State. In conjunction with media coverage sometimes fabrication of the cases has far-reaching goal to “formalise” in the Russian court files different levels of “criminal acts” by Ukrainian politicians (e.g. Arseniy Yatseniuk in the case against Klich and Karpiuk). However, due to their inaccessibility, arbitrarily chosen victims find themselves first in a pre-trial detention in Russia or Crimea where they confess to any offence that is being incriminated to them often under severe torture (Afanasiev, Vygivskiy, Klich) and then in court where they are used as a tool for propaganda and creating negative image of Ukraine while building a heroic image of Russia. They end up with lengthy sentences and are sent to maximum security prisons in the far corners of Russian Federation only to be used as pawns for negotiating various concessions.

For the purpose of this Concept Note, in order to determine whether a Ukrainian is a “political prisoner” a criterion set by international human rights organisations and the Parliamentary Assembly of the Council of Europe should be used⁷. The ECtHR’s case-law should also be referred to⁸.

In this regard, Ukrainians deprived of liberty on the territory of the RF and/or Crimea should be qualified as political prisoners, if:

- the real aim of detention of a person by the authorities was not the same as that proclaimed and was due, in particular, to exercising by a person of his rights to freedom of expression;
- actions of the authorities in relation to a person had no proper reasons - facts held against a person could not have given rise to legitimately serious criminal accusation and that the case against him had no “healthy core”⁹;
- circumstances of a person’s case, the presence of reasonable suspicion as regards the

⁷ <http://21.helsinki.org.ua/files/docs/1384807269.pdf>

⁸ Khodorkovkiy and Lebedev v. Russia, appl. no. 11082/06, 13772/05, 25 July 2013, § 907; Rasul Jafarov v. Azerbaijan, appl. no. 69981/14, 17 March 2016, §§ 153-158. Khodorkovskiy v. Russia, appl. no. 5829/04, 31 May 2011, §§ 254 - 258. Lutsenko v. Ukraine, appl. no. 6492/11, 3 July 2012, § 108. Cebotari v. Moldova, appl. no. 35615/06, 13 November 2007, §§ 48-49

⁹ Rasul Jafarov v. Azerbaijan, appl. no. 69981/14, 17 March 2016, §156.

motives of the authorities, perception of the fact of detention by civil society give reason to doubt the lawfulness of detention of a person¹⁰.

Therefore, political prisoners can be persons, subject to one or a set of factors such as:

- the detention was imposed only because of their political, religious or other beliefs, as well as due to the non-violent exercise of freedom of thought, conscience and religion, freedom of expression and information, freedom of assembly and association and other rights and freedoms guaranteed by the International Covenant on Civil and Political Rights or the European Convention on Human Rights;

- the detention was imposed only because of non-violent activities aimed at protecting human rights and fundamental freedoms;

- the detention was imposed only on the ground of sex, race, color, language, religion, national, ethnic, social or tribal origin, birth, nationality, sexual orientation and gender identity, status or other characteristics or based on the availability of sustainable communication with communities incorporating these characteristics.¹¹

There should also be distinguished principles that can be applied to assess the “validity” of prosecution of the Ukrainian nationals based on the following:

- key evidence of a person’s guilt does not meet the requirements of authenticity, admissibility and sufficiency;

- during the proceedings the person's right to a fair trial and other rights and freedoms guaranteed by the International Covenant on Civil and Political Rights or the European Convention for the Protection of Human Rights and Fundamental Freedoms were breached;

- selectivity of detention compared to the others.

A person may not be considered a political prisoner subject to the availability of authentic, reliable and sufficient evidence that confirms the real commitment of a common criminal offence and give a reasonable and legitimate basis for his or her prosecution.

Considering the above, the adopted law must contain minimum standards of treatment of and its obligations towards protected persons as defined by the Geneva Conventions:

4.2. As regards treatment of **prisoners of war**, Ukraine ensures minimum standards¹², **namely:**

1. Humane treatment - without any discrimination on the ground of race, color, religion or faith, sex, birth or wealth, or any other similar criteria.

2. The following is prohibited:

- the threat of violence and violence, in particular murder of all kinds, mutilation, cruel or inhuman treatment and torture, including biological experiments, intentional infliction of great suffering or serious injury or damage to health;

- compelling a prisoner of war to serve in the armed forces of a hostile power;

- intentional deprivation of the right to a fair trial;

- taking of hostages;

- outrages upon personal dignity, in particular humiliating and degrading treatment;

- conviction and punishment without previous judgment by a competent authority, affording all the judicial guarantees which are recognized as indispensable by civilized peoples;

- taking reprisals against prisoners of war;

- acts of violence or intimidation, as well as insults and inviting public curiosity.

3. The obligation to ensure:

- arrest, detention and placing into custody in accordance with the procedure laid down in Geneva Convention III¹³;

¹⁰ Khodorkovskiy v. Russia, appl. no. 5829/04, 31 May 2011, §§ 254, 255. Rasul Jafarov v. Azerbaijan, appl. no. 69981/14, 17 March 2016, §153.

¹¹ Khodorkovkiy and Lebedev v. Russia, appl. no. 11082/06, 13772/05, 25 July 2013, § 907. Rasul Jafarov v. Azerbaijan, appl. no. 69981/14, 17 March 2016, §§ 153-158. Khodorkovskiy v. Russia, appl. no. 5829/04, 31 May 2011, §§ 254 - 258. Lutsenko v. Ukraine, appl. no. 6492/11, 3 July 2012, § 108. Cebotari v. Moldova, appl. no. 35615/06, 13 November 2007, §§ 48-49.

¹² *Convention (III) relative to the Treatment of Prisoners of War*, Geneva, 12 August 1949, Articles 12-16.

¹³ *Convention (III) relative to the Treatment of Prisoners of War*, Geneva, 12 August 1949, Articles 17-20, 25.

- identification and registration of prisoners of war in accordance with the provisions of the law by competent authorities or persons authorized to arrest/ detain, and transmit information about prisoners of war to the Russian Federation. During interrogation a prisoner of war shall give only his name and rank, date of birth and personal number. It is prohibited to compel him to give any other information. Torture, reprisals or other ill treatment of prisoners of war are regarded as war crimes;

- custody in prisons separated from others (from persons detained or serving sentences under the domestic legislation of Ukraine) and in separate and adapted premises;

- immediate notification of any person who has a legitimate interest in obtaining such information, such as a relative or a defence lawyer, at least about the fact of their arrest or capture, the address of the place of detention and state of health;

- immediate medical examination;

- the right to a court's hearing in order to sanction the legitimacy of holding a person in custody or his/her release in a case of unlawful imprisonment;

- assistance to the wounded and sick, regardless which party to the conflict the person originates;

- female prisoners of war shall be kept separate and shall in all cases benefit from treatment as favorable as that of the men;

- the possibility to read the text of the Geneva Convention III in the language of the prisoner of war in places accessible to the prisoner;

- (free of charge) water and quality food in sufficient quantities, necessary clothing and medical care, hygiene necessary to maintain the wellbeing of prisoners of war;

- communication with relatives;

- conditions of accommodation of prisoners of war are equally favorable to those enjoyed by the forces of the Detaining Power, located in the same area, but in any case comply with provisions of Article 3 of the Geneva Convention III and the standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment;

- access to authorised representatives of the Protecting Powers, substitutes or the ICRC delegates to monitor the conditions of detention of prisoners of war and their treatment;

- drawing up wills by prisoners of war in a manner that secures their validity;

- certification and registration of death of a prisoner of war and the provision of information to the other party to the conflict about the death in a proper and timely manner;

- release and repatriation of prisoners of war after the end of active hostilities;

- voluntary repatriation of prisoners of war;

- priority repatriation of persons: - incurably wounded and sick whose mental or physical health have been gravely diminished; - wounded and sick who, according to medical opinion, are not likely to recover within one year, whose condition requires treatment and whose mental or physical fitness seems to have been gravely diminished;

- the right to receive parcels of humanitarian aid;

- complete freedom to perform rites of their religion, subject to their observance of discipline imposed by military authorities;

- extension of the laws and statutes being in effect in the Armed Forces of the Detaining Power. In the event of unlawful acts, judicial or disciplinary measures may be applied to the POWs;

- humane treatment of the POWs in a case of their breakout;

- exchange of POWs in the course of an armed conflict.

4.4. As regards the treatment of **civilian population**, Ukraine ensures the following minimum standards:

1. The following is prohibited:

1) violence to life and person, in particular murders of all kinds, mutilation, cruel treatment and torture;

2) taking of hostages;

3) outrages upon personal dignity, in particular humiliating and degrading treatment;

4) conviction and punishment without previous judgment pronounced by a competent authority, affording all the judicial guarantees which are recognized as indispensable by civilized

peoples;

5) regardless of their motive, individual or mass forcible transfers or deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not;

6) physical or moral coercion against persons, in particular to obtain any information from them or from third parties;

7) taking any measure that may lead to physical suffering or the extermination of persons. This prohibition applies not only to murder, torture, corporal punishment, mutilation and medical or scientific experiments not necessitated by the medical treatment of a protected person, but also in relation to any other measures of abuse whether applied by civilian or military agents;

8) collective punishment and likewise all measures of intimidation or of terrorism; no protected person may be punished for an offence he or she has not personally committed;

9) pillage;

10) reprisals against protected persons and their property are prohibited;

2. Ensures the rights and needs, including:

1) humane treatment, personal respect and respect for honour, the right to a family, their religious beliefs and rituals, habits and customs, the right to communicate with relatives; protection against acts of violence or intimidation, as well as insults and public curiosity;

2) special protection of women against any attacks on their honor, in particular against rape, enforced prostitution, or any form of indecent assault;

3) treatment without discrimination, particularly on the ground of race, religion or political opinion, subject to the provisions regarding health, age and sex;

4) collecting the wounded and sick and providing them with appropriate assistance.

5) creating special regime of treatment for minors;

6) allowing visits by delegates of the International Committee of the Red Cross;

7) allowing the receipt of at least one relief parcel monthly.

4.5. To register all protected persons under the control of Ukraine, ensure the exchange of information about protected persons with Russia.

The register is to include the following information:

1) person's first name, patronymic (if any) and last name;

2) person's country of origin, rank, identity number and date of birth, state of health, other information that may identify a person (biometric data, physiological characteristics, blood group, contact details of relatives and others);

3) date, time and place (address of the locality, geographic coordinates) of deprivation of liberty;

4) state body that took a decision on deprivation of liberty and the grounds for deprivation of liberty;

5) state body that controls deprivation of liberty, place of deprivation of liberty, date and time of deprivation of liberty and body in charge of the place of deprivation of liberty;

6) date when an arrested person was transferred to the court and other information relating to the proceedings;

7) information relating to the physical integrity of a person deprived of liberty;

8) in case of death during the period of deprivation of liberty, circumstances and cause of death and information about the transfer of the remains;

9) date and time of release or transfer to another place of detention, destination point and body responsible for the transfer.

Information referred to in paragraph 1 and 2 is given by a person voluntarily.

4.6. To keep count of protected persons under the control of Russia

The register is to include the following information:

1) person's first name, patronymic (if any) and last name;

2) person's country of origin, rank, identity number and date of birth, state of health, other information that may identify a person (biometric data, physiological characteristics, blood group, contact details of relatives and others);

3) date, time and place (address of the locality, geographic coordinates) of deprivation of

liberty;

4) state body that took a decision on deprivation of liberty and the grounds for deprivation of liberty;

5) state body that controls deprivation of liberty, place of deprivation of liberty, date and time of deprivation of liberty and body in charge of the place of deprivation of liberty;

6) date when an arrested person was transferred to the court and other information relating to the proceedings;

7) information relating to the physical integrity of a person deprived of liberty;

8) in case of a death during the period of deprivation of liberty circumstances and cause of death and information about the transfer of the remains;

9) date and time of release or transfer to another place of detention, destination point and body responsible for the transfer.

10) person's wish to return to Ukraine.

4.7. Information about persons detained/imprisoned for political reasons shall be kept separately in the Register.

Persons detained/imprisoned for political reasons should be placed in the register of political prisoners based on the following criteria:

- citizenship (citizenship of Ukraine);

- the territory where a person was detained (e.g., the Crimean Peninsula);

- a place of detention of a person (a type of institution of the penitentiary system, address);

- subject of prosecution (which articles of the criminal law of the Occupying Power are alleged against a person);

- time of detention (day, month, year, hour);

- person's intention to return to Ukraine (voluntarily).

4.8. Information shall be entered into the Register upon the information supplied by any individual or an organization.

4.9. Information entered into the Register shall have official status.

Other Legislative Steps

The State of Ukraine must facilitate bringing domestic legislation in line with the standards of international law, including introduction of liability for war crimes and crimes against peace and humanity, which will include, inter alia,

- introduction of criminal liability for so called core crimes under international law (genocide, crimes against humanity and war crimes) in maximum compliance with the requirements of international law (including – pursuant to the provisions of the Rome Statute), including international commitments of all states to prevent impunity for such crimes;

- solution to an issue criminal liability for persons who committed offences before the entering into force of the new rules of the Criminal Code;

- the possibility of international cooperation during criminal proceedings (including - with regard to the International Criminal Court);

- introduction of criminal liability for other crimes which in modern international law are also considered as crimes under international law (extrajudicial executions, torture, slavery, enforced disappearance, piracy, etc.).

Ukraine is additionally recommended to develop a public position on the prosecution of those who committed the above crimes, as well as took direct part or contributed to the occupation of Ukraine. This would lead to the introduction of necessary amendments to the current legislation of Ukraine (regarding criminal liability, lustration, amnesty, etc.) concerning the legal consequences of such crimes and offenses. To inform the entire population of Ukraine about the State's settled position.

V. Organisation and Competence of the Government Authorities

In order to implement the Strategy the following prerequisite legislative steps are to be taken

by the Government authorities:

Verkhovna Rada (Parliament of Ukraine) is to:

- 1) define the current armed conflict in Ukraine in line with the preliminary qualification of the competent international authorities (the ICC and the ICRC) in the domestic legislation¹⁴;
- 2) develop and adopt the law on Status of the protected persons in line with that as defined by the Geneva Conventions

5.1) **The Council of National Security and Defence (hereafter - “CNSID”)** is to be made responsible for the coordination of humanitarian affairs and clear redistribution of powers among every designated state authority which are to operate under the umbrella of the CNSID in the matters pertinent to the armed conflict.

5.2) **National Information Bureau (NIB) is to be created** in order to collect and transfer information, documents and personal effects of protected persons under the control of Russia and/or Ukraine and prevent their disappearance.

The main objective for establishing the NIB is to ensure the availability of information and the exchange by the parties to the conflict of information about persons deprived of liberty /prisoners of war, internees and detainees, and promote the prevention of disappearance of people, informing relatives of missing persons or persons about whom there is information as to their location under the control of Russia and Ukraine, to provide the parties to the conflict with opportunities to ensure fundamental rights and guarantees.

The NIB shall be established on the following principles (conditions):

- it has a status of public institution subordinated directly to the Council of National Security and Defence (CNSD) of Ukraine;
- it is established by the Government by order /upon initiative of the President of Ukraine (for subordination to the CNSD of Ukraine);
- the NIB’s procedure for formation of administration (appointment and dismissal of high officials or members of this institution as a collegial body), exercise of powers and financing ensure its political independence, transparency and accountability to the society;
- NIB’s appeals and decisions are binding for state agencies authorised to perform functions during an armed conflict in certain areas;
- close co-operation with civil society organisations and citizens (while collecting, verifying, disseminating information, etc.);
- online appeals, including online registration of data of a person who might be in captivity, interned or detained.

The NIB has the following objectives and powers:

- 1) to register persons taken in custody or interned /prisoners of war, internees and detainees/;
- 2) to collect and transfer information to relatives of persons deprived of their liberty;
- 3) to be a link between the parties to the conflict, which shall promptly provide it with information about prisoners of war and other protected persons;
- 4) to transmit information without delay about POWs and other protected persons to Russia (in case of prisoners of war) or the country whose citizens or residents they are;
- 5) to respond to inquiries about prisoners of war and other protected persons;
- 6) to request information about prisoners of war;
- 7) to collect information, documents and personal belongings that may contribute to the identification of certain categories of protected persons (the sick, wounded, who have suffered an accident or dead combatants, prisoners of war, etc.), including information about the captivity, health, injury, illness, cause of death and changes in the status (transfer to another place of

¹⁴ See III above Legislative Framework

detention, release, repatriation, hospitalization, death);

8) to collect information about detention of prisoners of war who tried to breakout, certified lists of prisoners of war who died in captivity, certificates of death or duly verified lists of the dead, information about the exact whereabouts and marking of burial sites and valuables (including foreign currency, documents important for close relatives, such as a will, or other items of informative and sentimental value).

The CNSD of Ukraine as a centre for the coordination has, in particular, the following powers:

- to protect the rights and interests of the State;
- to effectively accumulate evidence of Russia's violations of IHL and IHRL in the occupied territories of the Crimean Peninsula and on so called "LPR/DPR";
- to initiate international investigations and research, initiate the development of new and facilitate the use of international legal mechanisms for combating hybrid aggression;
- to develop and ensure implementation of human rights strategies throughout the armed conflict and during a post-conflict period, the strategy of de-occupation of the territory of Ukraine (in particular, to demand the application of the legislation of Ukraine in the occupied territory, to develop criteria for the legitimacy of the judicial decisions, the legality of proceedings, to develop criteria for evaluating the actions of officials of the Occupying Power to distinguish acts of treason, etc.) and other strategic documents for the settlement of the armed conflict with the maximum preservation of the interests of Ukraine;
- to coordinate the work of state bodies authorised to perform functions during the armed conflict in certain areas, and local authorities;
- to directly coordinate activities of the National Information Bureau;
- to cooperate with civil society organisations and citizens;
- to create and coordinate the efforts of the collection of evidence by a platform of organisations and individuals.

5.3) The work of the designated state authorities under the authority of the CNSD shall be organised in the following manner:

Cabinet of Ministers of Ukraine is responsible for:

- ensuring a creation of a register of POWs, persons interned and detained by the authorities by each of the warring parties, the establishment of the National Information Bureau;
- introducing urgent amendments to the Regulations to the powers of the responsible executive bodies;
- providing operational resources for all measures outlined in this Concept Note;
- ensuring consolidated and integrated actions by every designated state authority responsible for implementing decisions of the CNSD.

Ministry of Defence is responsible for:

- administering the register pertaining to the POWs, persons interned and detained by Ukraine and persons interned or detained by the RF;
- ensuring minimum standards for treatment of the POWs, in particular defined in clause 4.3 of this Concept Note;
- ensuring minimum standards for treatment of the civilian population, in particular defined in clause 4.4 of this Concept Note;
- submitting proposals to the CNSD of Ukraine on the procedure for the repatriation of prisoners of war on both sides;
- ensuring appropriate training for servicemen and personnel of the Ministry of Defence, who are engaged in the armed conflict, on IHL and IHRL matters, procedures for documenting war crimes and crimes against humanity in the territory of the armed conflict, facts of violations of human rights, facts of aggression of the Russian Federation, confirming the existence of effective control of Russia over the so called "LPR/DPR";

- documenting crimes: war crimes and crimes against humanity in the territory of the armed conflict, as well as document facts of violations of human rights, facts of aggression of the Russian Federation, confirming the existence of effective control of Russia over the so called “LPR/DPR”.

Security Service of Ukraine is to be responsible for:

- administering the register of POWs, persons interned and detained by Russian authorities who are members of Ukrainian secret subversive groups;
- administering the register of POWs, persons interned and detained by the authorities of Ukraine who are members of Russian secret subversive groups;
- carrying out *effective* investigations;
- documenting crimes (*as part of effective investigation*): war crimes and crimes against humanity in the territory of the armed conflict, as well as documenting facts of violations of human rights, facts of aggression of the Russian Federation, confirming the existence of effective and overall control of Russia over the so called “LPR/DPR”, preparing evidentiary basis for international courts (jurisdictional bodies);

Given the above redistribution of powers, there should be amended functions of the Joint Center of the Security Service of Ukraine for Coordination of Search, Release of captives, Hostages and Location of Missing Persons in the ATO Area.

Office of the Prosecutor General of Ukraine (Prosecutor’s Office of Crimea, Military Prosecutor’s Office) having access to the register of POWs, persons detained or interned is to be responsible for:

- carrying out *effective* investigations in respect of those detained by each of the warring parties;
- cooperating with the RF’s competent authorities in cases of investigations carried out by the same;
- terminating all criminal proceedings against POWs, in case of the entry into force of a court’s judgement of conviction in relation to POWs, to grant complete amnesty and expunge a criminal record;
- administering the register as pertaining to the POWs, persons interned and detained by Russian authorities – with regard to the persons detained/imprisoned for political reasons, Ukrainian nationals;
- documenting crimes (*as part of effective investigation*): war crimes and crimes against humanity in the territory of the armed conflict, as well as document facts of violations of human rights, facts of aggression of the Russian Federation, confirming the existence of effective and overall control of Russia over the so called “LPR/DPR”, to prepare evidentiary basis for the international courts;
- cooperating with other designated state authorities;
- *effectively* investigating cases of the missing on the occupied territories;
- submitting proposals to the CNSD of Ukraine on the procedure for the repatriation of interned and forcibly displaced persons on both sides.

Ministry of Foreign Affairs is to be responsible for:

- foreign information policy to convey to the countries of the world, international organisations the facts of violations of human rights, international humanitarian law by Russia as Occupying Power in the occupied territory of Ukraine and in the East of Ukraine as a Power that exerts effective control over the so called “LPR/DPR”;
- representing and protecting state interests in international and bilateral negotiations;
- representing Ukraine (upon CNSD’s approval) in international judicial (jurisdictional) bodies.

Ministry of Justice is to be responsible for:

- administering the register pertaining to the POWs, persons interned and detained by the authorities of Ukraine within the penitentiary system of Ukraine;

- developing draft laws in order to implement international law;
- preparing proposals concerning return of citizens of Ukraine, who were in places of detention (institutions of penitentiary system) in Crimea at the time of Russia's occupation of the peninsula and implement them upon CNSD's approval;
- ensuring minimum standards for treatment of the civilian population, in particular persons defined in clause 4.4 of the Concept who are in institutions of the penitentiary system of Ukraine.

Ukrainian Parliament Commissioner for Human Rights is responsible for:

- being an independent observer over the designated authorities' compliance with principles and priorities outlined in this Concept Note;
- coordinating actions with the RF's Commissioner for Human Rights supervising citizens of Ukraine who are under the control (in places of detention) of Russia and in the territories occupied by the Russian Federation;
- carrying out parliamentary control over the observance of human rights by designated authorities.

VI. The Role of the Civil Society

Civil society is to be involved in:

- overseeing administration of the register and activities of the NIB, investigations;
- participating in the development of legislation;
- participating in the coordination activities of the CNSD;
- entering information pertaining to citizens, volunteers, community experts to the register;
- validating the information prior to being added to the NIB;
- participating in educational and awareness-raising activities;
- overseeing the conditions of detention and repatriation of POWs, internees and detainees;
- participating in negotiations at bilateral and multilateral level.