

The Cycle of Forced Prison Labour in Ukraine's Occupied

Territories: an Open Secret

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Abstract

In the early months of the ongoing conflict between Russian-backed armed groups and Ukrainian armed forces in eastern Ukraine, separatist militants declared the establishment of the so-called Donetsk and Luhansk People's Republics. Unrecognised by international law and the vast majority of countries around the world, the two 'republics' operate beyond any jurisdiction or accountability. Forced labour is, according to converging prisoner testimony and reports from international human rights groups, extremely prevalent in detention centres in these two so-called 'republics', existing alongside extreme forms of physical torture and psychological manipulation. This analysis will focus on the systematic use of forced labour in prisons operated by these armed groups. It will be argued that forced labour in these prisons forms part of a cycle of exploitation: economic gain and the practice of prisoner exchanges feed the cycle, in turn exacerbating problems in the justice sector and in achieving international monitoring. This paper is divided into six sections, aiming to demonstrate that despite the cyclical nature of forced prison labour in these territories, there are ways forward through international law and the careful examination of existing practices of engaging with the occupying authorities.

Chapter I

Background

Ukraine: independence, the ‘westward drift’ and Russian intervention

Ukraine declared independence from the Soviet Union on 24 August 1991, following a vote in the Ukrainian Parliament supported by 98% of deputies, in what was the fourth attempt to declare independence in the twentieth century alone.¹ Independence was confirmed by a referendum on 1 December 1991, which achieved a turnout of 84%, of which 90% voted in favour.² Since then, Ukrainian independence has not, however, been untroubled. Parts of Ukrainian territory have been illegally occupied by Russian-backed militants since 2014, in a series of events rooted in a foreign policy crisis which snowballed into international armed conflict.

In November 2013, Ukrainian President Victor Yanukovich refused to sign an association agreement with the European Union, sparking popular protests most notably on Kyiv’s main square, Maidan Nezalezhnosti, and spreading to other major cities around the country. The movement, which came to be referred to as the Revolution of Dignity, or ‘Euromaidan’, gathered huge public support in opposition to government corruption and nepotism, and in favour of closer ties with the European Union, ultimately resulting in the ousting of Yanukovich on 21 February 2014. However, this did not come before the deaths of more than one hundred protestors and the wounding of over one thousand, largely due to interventions of Berkut special police and civilian mercenary ‘titushky’.³ Russian intervention, or at least influence, was a feature of even these earliest stages: an investigation by the Security Service of Ukraine later found that many of the snipers responsible for the deaths of protestors came from Russia.⁴

The political unrest in Ukraine and the Revolution’s demonstration of a popular desire to take a path towards joining the European Union, in what Serhii Plokhy terms Ukraine’s ‘westward drift’,⁵ evidently concerned the leadership of the Russian Federation. Two years

¹ Serhii Plokhy, *The Gates of Europe. A History of Ukraine*, (London: Penguin Books, 2016), pp.319 – 320.

² Ibid., p.321.

³ Tetyana Ogarkova, ‘Four Years after the Maidan, How Is the Investigation Going?’, 19 February 2018, <<https://www.atlanticcouncil.org/blogs/ukrainealert/four-years-after-the-maidan-how-is-the-investigation-going/>>, [accessed 13 April 2021].

⁴ Serhii Plokhy, *The Gates of Europe*, p.340.

⁵ Ibid.

prior, Vladimir Putin had stated that the reintegration of post-Soviet space was one of his priorities for his presidency.⁶ These were not empty words: he has stated that he personally took the decision to ‘return’ Crimea to Russia at a meeting on 22 February 2014.⁷ Under the pretext of ‘protecting’ Russian speakers in the region,⁸ on 27 February 2014, Russian special forces without insignia took control of the regional parliament of Crimea in Simferopol.⁹ Following an internationally-unrecognised ‘referendum’ in Crimea and Sevastopol on 16 March, President Putin signed laws incorporating Crimea and Sevastopol into the Russian Federation on 21 March 2014.¹⁰

But intervention was not limited to Crimea. Separatist militia, with direct involvement from the Russian Armed Forces, established varying levels of control over parts of the Donetsk and Luhansk regions in eastern Ukraine, and in April 2014 announced the establishment of two so-called ‘republics’, the Donetsk People’s Republic and the Luhansk People’s Republic (hereinafter ‘DPR’ and ‘LPR’ respectively).¹¹ The armed groups held illegal, unmonitored referenda on 11 May 2014, after which they declared independence from Ukraine.¹² Russian special forces further attempted to initiate hostilities in other parts of southern and eastern Ukraine, including in Kharkiv and Odesa, but did not succeed in fully destabilising government control.¹³

The control of parts of Donetsk and Luhansk by armed groups and state proxies has resulted in an ongoing conflict between Ukraine and separatist, Russian-backed militia, and to

⁶ Ibid., pp.339 - 340.

⁷ Ibid., p.340.

⁸ Elizabeth Cullen Dunn, and Michael S. Bobick, ‘The empire strikes back: War without war and occupation without occupation in the Russian sphere of influence’, *American Ethnologist*, 41:3, p.405.

⁹ Anders Åslund, ‘Kremlin Aggression in Ukraine: The Price Tag’, 1 March 2018, <https://www.atlanticcouncil.org/wp-content/uploads/2018/03/Kremlin_Aggression_web_040218_revised.pdf>, [accessed 6 April 2021], p.1.

¹⁰ ‘Laws on admitting Crimea and Sevastopol to the Russian Federation’, <<http://en.kremlin.ru/catalog/regions/CR/events/20625>>, [accessed 12 April 2021].

¹¹ Amnesty International and Human Rights Watch, “‘You Don’t Exist’: Arbitrary Detentions, Enforced Disappearances, and Torture in Eastern Ukraine”, 21 July 2016, EUR 50/4455/2016, (London: Amnesty International Ltd., 2016), <<https://www.amnesty.org/download/Documents/EUR5044552016ENGLISH.PDF>>, [accessed 23 April 2021], p.10.

¹² Maksymillian Czuperski et al., ‘Hiding in Plain Sight: Putin’s War in Ukraine’, <https://www.atlanticcouncil.org/wp-content/uploads/2019/08/HPS_English.pdf>, (Washington, DC: Atlantic Council, 2015), p.3.

¹³ Anders Åslund, ‘Kremlin Aggression in Ukraine: The Price Tag’, p.1.

date more than 14,000 lives have been lost, and almost 2 million have been displaced.¹⁴ While it is beyond the scope of this thesis to fully reflect on the extent of Russian involvement in the occupation of and conflict in Donetsk and Luhansk, a brief discussion of the facts is necessary to establish the correct terminology regarding the situation, and certain legal dimensions relating to the rights of those held captive in these regions. It is firstly important to note that while both Crimea and parts of Donetsk and Luhansk are not under Ukrainian government control, the situation of Crimea differs from that of eastern Ukraine. This stems from the way in which the Russian Federation directly occupies Crimea as a state, allowing for the functioning of Russian state institutions and the application of Russian laws.¹⁵ Although the occupation of Crimea is illegal under international law, this style of occupation nonetheless provides a theoretical legal basis – that of the Russian Federation – for actions undertaken by the administration in Crimea, regardless of whether they are used in practice.

The non-government-controlled areas of Donetsk and Luhansk, on the other hand, are controlled by proxies of the Russian Federation and non-state armed groups with direct links to Russia. Indeed, the Kremlin continues to deny involvement in these territories and has never officially recognised them as part of the Russian Federation, and consequently takes no formal responsibility for their governance.¹⁶ Although the situation in Crimea is by no means unproblematic, particularly in terms of human rights, occupied Donetsk and Luhansk have been termed comparably ‘lawless’,¹⁷ subject to non-homogenous rule by often-competing armed groups operating on the basis of non-internationally recognised ‘legal’ systems, or simply on the whims of individuals. Due to the different forms of occupation in Crimea on the one hand, and Donetsk and Luhansk on the other, this analysis shall focus exclusively on the latter.

The extent of Russian involvement will be explored in more detail in Chapter IV, however it is important at this stage to establish that the distinction between international and non-international armed conflicts (IAC and NIAC respectively), is significant in terms of which international conventions apply to a given situation. In the case of Donetsk and Luhansk, the International Criminal Court found in 2016 the ‘existence of an international armed conflict

¹⁴ Adrian Karatnycky ‘Prisoner exchange lifts the veil on Russia’s hybrid war against Ukraine’, 9 January 2020, <<https://www.atlanticcouncil.org/blogs/ukrainealert/prisoner-exchange-lifts-the-veil-on-russias-hybrid-war-against-ukraine/>>, [accessed 6 April 2021].

¹⁵ Anders Åslund, ‘Kremlin Aggression in Ukraine: The Price Tag’, p.3.

¹⁶ Ibid., p.5

¹⁷ Ibid., p.2.

in the context of armed hostilities in eastern Ukraine from 14 July 2014 at the latest, in parallel to the non-international armed conflict'.¹⁸ In addition to this, the question of whether the situation qualifies as occupation, and therefore whether Russia has effective control, is extremely important for the same reason. For this it is necessary to establish both the existence of the effective control of non-governmental forces in the territory, and the existence of the overall control of the Russian Federation over those forces. While the available information points to the existence of such a situation, the International Criminal Court has yet to come to a definitive conclusion.¹⁹ Consequently, this analysis shall cover possible steps forward for both eventualities.

At the time of writing, the occupied areas of Ukraine amount to approximately 43,133km², which equates to just over 7% of Ukraine's total area. This includes all of Crimea, as well as roughly one third of both Donetsk and Luhansk regions.²⁰ The situation is still volatile, as evidenced by the increased tensions along the Russian-Ukrainian border in early 2021.²¹ This only highlights the urgency of addressing the situation faced by prisoners, since the conflict shows no signs of ending in the near future.

¹⁸ International Criminal Court, The Office of the Prosecutor, 'Report on Preliminary Examination Activities (2016)', 14 November 2016, <https://www.icc-cpi.int/iccdocs/otp/161114-otp-rep-PE_ENG.pdf>, [accessed 28 April 2021], p.37.

¹⁹ Dmytro Kuleba, 'International investigation into Ukraine war crimes is Kremlin's worst nightmare', <<https://www.atlanticcouncil.org/blogs/ukrainealert/international-investigation-into-ukraine-war-crimes-is-kremlins-worst-nightmare/>>, [accessed 2 July 2021].

²⁰ 'Ukraine. The World Factbook', <<https://www.cia.gov/the-world-factbook/countries/ukraine/>>, [accessed 16 April 2021].

²¹ Dan Sabbagh, 'Military buildup near Ukraine sows confusion over Russian intentions', 12 April 2021, <<https://www.theguardian.com/world/2021/apr/12/military-buildup-near-ukraine-sows-confusion-over-russian-intentions>>, [accessed 15 April 2021].

Chapter II

Prison Labour and Forced Labour: A Fine Line

Article 4 of the Universal Declaration of Human Rights states that, ‘No one shall be held in slavery or servitude: slavery and the slave trade shall be prohibited in all their forms’.²² And yet, wherever international law prohibits forced labour, it makes an exception for prison labour.²³ This is evidenced, for example, in the fact that all of the relevant international conventions, including the International Labour Organisation’s 1930 and 1957 Conventions, the International Covenant on Civil and Political Rights, and the European Convention on Human Rights and Fundamental Freedoms, protect against compulsory labour as a human right, but make an exception for forced labour where prisoners are involved.²⁴ Thus, not all forms of labour in prisons qualify as ‘forced labour’ under international law as a matter of course.

Nevertheless, these texts do specify that prisoners performing labour must be imprisoned legally. One example is Article 2 of the International Labour Organization’s Forced Labour Convention (No. 29) of 1930, which defines forced labour as, ‘all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily’, making an exception for ‘any work or service exacted from any person as a consequence of a conviction in a court of law’.²⁵ This therefore specifically disallows forced prison labour for those awaiting trial, or in administrative detention. Thus, the key distinction between forced labour and permissible prison labour is the status of the prisoner, as well as the sentencing authority. In the case of civilian prisoners in the occupied territories of Donetsk and Luhansk, there is seemingly no distinction drawn between those that have and have not been tried, and the trials that do occur do not meet international standards. In this case, prisoners should not be forced to work under any circumstances.

²² United Nations Human Rights Office of the High Commissioner, ‘Special Rapporteur on contemporary forms of slavery, including its causes and consequences’, <<https://www.ohchr.org/en/issues/slavery/srslavery/pages/srslaveryindex.aspx>>, [accessed 19 May 2021].

²³ Gerard de Jonge, ‘Still ‘Slaves of the State’: Prison Labour and International Law’, *Prison Labour: Salvation or Slavery? International Perspectives*, ed. by Dirk van Zyl Smit and Frieder Dünkel, (London: Routledge, 1999), < <https://doi-org.ezp.lib.cam.ac.uk/10.4324/9780429426872>>, [accessed 21 June 2021], p.320.

²⁴ Ibid.

²⁵ International Labour Organization, ‘Co-29 – Forced Labour Convention, 1930’ (No. 29), <https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C029>, [accessed 17 June 2021].

The nature of work that is permissible for prisoners to perform is also important to consider. Rule 97 of the UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), for example, states that, ‘Prison labour must not be of an afflictive nature’.²⁶ International agreements on the treatment of prisoners of war take a similar view: the Third Geneva Convention Relative to the Treatment of Prisoners of War of 12 August 1949 maintains in Article 49 that any labour undertaken by prisoners of war in IACs should be, ‘with a view particularly to maintaining them in a good state of physical and mental health’.²⁷ International texts are therefore unequivocal on the prioritisation of the safety and health of both civilian and military prisoners in any work that they undertake.

The self-declared authorities of the DPR and LPR are not party to any conventions, and have dubious legal systems, with civilian prisoners and prisoners of war often subject to the same conditions. However, the qualification of forced labour itself is not dependent on this: as noted by the International Labour Organization, ‘a forced labour situation is determined by the nature of the relationship between a person and an “employer” and not by the type of activity performed, however arduous or hazardous the conditions of work may be, nor by its legality or illegality under national law’.²⁸ There are therefore three key elements in identifying forced prison labour: receiving a fair trial in criminal (not prisoner of war) cases; the maintenance of the welfare of the prisoners; and, the element of obligation. However, as will be examined in Chapter IV, there remain several promising possibilities for pursuing accountability through international law, in spite of the unrecognised nature of the author. Thus, as will be examined further in Chapter IV, there are several avenues which offer hope for pursuing accountability for abuses of the rights of prisoners in occupied Donetsk and Luhansk through international law.

²⁶ United Nations General Assembly, ‘United Nations Standard Minimum Rules for the Treatment of Prisoners’, A/RES/70/175, 2015, <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N15/443/41/PDF/N1544341.pdf?OpenElement>>, [accessed 17 June 2021], p.29.

²⁷ ‘III Geneva Convention Relative to the Treatment of Prisoners of War of 12 August 1949’, <https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.32_GC-III-EN.pdf>, [accessed 16 April 2021], p.110.

²⁸ International Labour Organization and Walk Free Foundation, ‘Global Estimates of Modern Slavery: Forced Labour and Forced Marriage’, 19 September 2017, <https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_575479.pdf>, [accessed 6 April 2021], p.16.

Chapter III

The proliferation of slave labour in prisons of occupied territories

(i) Pre-conflict conditions for prisoners in Ukraine

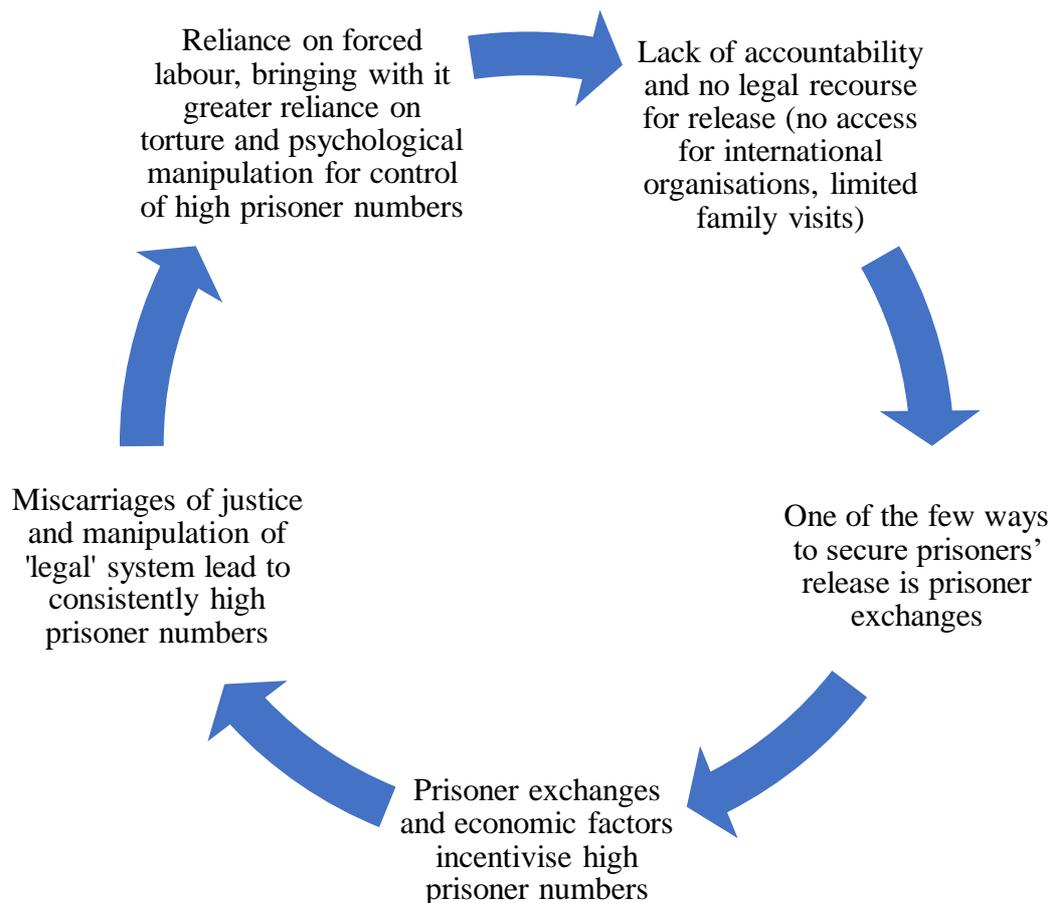
As is common practice in many parts of the world, prisoners in Ukrainian government-controlled prisons are commonly given the opportunity to work while serving their sentence. Prior to 2014, in Ukrainian prisons in now-occupied territories, prisoners who agreed to work could have their sentence reduced by a third, and additionally received a small payment, which could be spent on items such as extra food.²⁹ This is not to suggest that prior to 2014 these prisons boasted ideal conditions or practices. The Ukraine Solidarity Campaign notes the existence of torture and brutal treatment, badly trained staff, and high levels of diseases such as AIDS prior to the occupation. Despite this, prisoners were paid for their work, and there had been efforts at reform.³⁰ Crucially, labour undertaken was voluntary, and prisoners received payment for their efforts. Nonetheless, however imperfect Ukrainian prisons were before 2014, any benefits of work for prisoners disappeared with the occupation and establishment of the DPR and LPR, and any labour carried out under such circumstances unequivocally falls into the category of forced labour, as will be explained further below.

(ii) A cycle of forced prison labour

I propose that the problem of forced prison labour in the DPR and LPR can be understood best as a cycle, through which it has become integral to the functioning of the regimes:

²⁹ Patrick Evans, ‘Slave labour’ in the prisons of eastern Ukraine’, 3 October 2016, <<https://www.bbc.com/news/magazine-37512356>>, [accessed 3 May 2021].

³⁰ Ukraine Solidarity Campaign, ‘Slave labour in Lugansk: what war in Ukraine has “achieved”’, 14 October 2016, <<https://ukrainsolidaritycampaign.org/2016/10/14/slave-labour-in-lugansk-what-war-in-ukraine-has-achieved/>>, [accessed 8 April 2021].



As noted in the above diagram, the systematic reliance on forced prison labour in Ukraine's occupied territories profits from an international gridlock on access for monitoring missions and Russia's status, leading to a reliance on prisoner exchanges and high prisoner numbers. This in turn fosters the use of methods of control in order to deal with prisoner numbers, leading to an increased unwillingness on the part of the 'authorities' to allow access for monitoring missions.

(iii) Forced prison labour: a multi-purpose tool for non-recognised regimes

Following occupation, the non-state armed groups responsible took control of pre-existing detention centres, but also commandeered other premises and turned them into ad hoc prisons. Locations of illegal detention centres in occupied territories reportedly include the premises of law enforcement agencies, prosecutors' offices, former buildings of the Security Service of

Ukraine, offices, and even a school.³¹ The Center for Civil Liberties additionally reports the widespread existence of ‘secret’ detention centres outside of cities, which are thought to be far greater in number than currently documented.³² With such a lack of homogeneity across detention centres, and even across the groups controlling them, the protection of human rights of prisoners is, unsurprisingly, greatly problematic.

Forced labour is implemented on a massive scale in these detention centres: Pavel Lisanky, Director of the Eastern Human Rights Group, noted in 2018 that in occupied Donetsk and Luhansk, ‘All prisoners are forced to work’.³³ A 2016 report released by the Eastern Human Rights Group stated that approximately five thousand people are subject to forced labour every day in the LPR alone,³⁴ but exact numbers are difficult to verify due to the secret nature of many detention centres, and the difficulty of carrying out monitoring missions.

Tasks vary across institutions but work mostly involves hard labour and industrial production. It has been found by the Eastern Human Rights Group, for instance, that all ‘correctional facilities’ in the LPR have industrial zones in which prisoners are forced to work.³⁵ Items produced through forced labour include wooden furniture, park benches, coffins, staples, barbed wire, fences, tiles, knives, construction materials, souvenir products (including chess sets and religious icons), and flour, to name only a few. *Ukrainska Pravda* reports that almost all those detained at Izoliatsiia – a ‘secret’ detention centre operated by so-called authorities of the DPR, where some of the worst and most notorious human rights abuses continue to be committed – are made to partake in forced labour. This includes loading up weapons, collecting scrap metal, dismantling buildings for bricks, and clearing snow.³⁶ Prisoners regularly lack the safety equipment necessary for undertaking industrial work, and

³¹ Center for Civil Liberties, ‘Violations of human rights and international crimes during the war in the Donbass. Almanac of monitoring reports 2020’, 5 November 2020, <https://ccl.org.ua/wp-content/uploads/2020/11/CombineReportEng2020_CCL_MF_Web.pdf>, [accessed 13 April 2021], p.8.

³² Ibid.

³³ Pavel Lisanky, in Oksana Trufanova, ‘How prisoners in Ukraine’s occupied territories live, work and survive’, 24 July 2018, <<https://www.opendemocracy.net/en/odr/prisoners-of-the-donbas/>>, [accessed 2 April 2021].

³⁴ Eastern Human Rights Group, ‘Monitoring Review of Human Rights Violation in Detention Facilities in Certain Parts of Donetsk and Lugansk Regions’, September 2016, <<https://drive.google.com/file/d/0B7oLXom125V-TlktN0Y2T1l1OHc/view>>, [accessed 5 April 2021], p.8.

³⁵ Ibid., p.7.

³⁶ Media Initiative for Human Rights, ‘Страх та смерть в “Ізоляції”. Як катують людей у підвалах Донецька’.

former prisoners of the LPR additionally report working for more than twelve hours per day.³⁷ These testimonies are supported by findings of the OHCHR, which noted in a 2017 report that guards at Izoliatsiia force detainees to ‘constantly perform physical work’ in order ‘[t]o keep detainees in a state of exhaustion’.³⁸ Thus, not only is the personal safety of detainees disregarded, but long working hours exacerbate this by increasing the risk of accidents from fatigue. There is a brazen impunity to the administrations profiting from this: products produced by prisoners are openly advertised on websites affiliated with the LPR, for example.³⁹

The work to which prisoners are subject is not, however, limited to work that has monetary value. The objective of many tasks appears to be to increase the psychological burden on prisoners and to encourage obedience towards the prison administration. Former prisoners of Molodizhny quarter 20A, a temporary detention centre which existed in a basement in the LPR, have testified that when certain prisoners left to work outside of the basement, those remaining inside ‘had to wash the blood off the walls and the floor after torture sessions,’⁴⁰ a practice to which former prisoners of two Sloviansk prisons created during the city’s occupation also testify.⁴¹ Aside from the psychological effects of this work, prisoners encounter a high risk of contracting blood-borne infectious diseases through not having the personal protection equipment to deal with bodily fluids. In what is perhaps the most shocking examples of this type of forced labour, the Center for Civil Liberties has reported that prisoners in occupied Donetsk and Luhansk have been made to dig graves ‘for themselves’.⁴² This suggests that forced labour is implemented in detention centres not only for the enrichment of the administration, but also for purposes of psychological control.

³⁷ ‘Profits and Punishment: Prisons of the Donbas’, 18 October 2016, <https://en.bromadske.ua/posts/profits_and_punishment_prisons_of_the_donbas> [accessed 15 April 2021].

³⁸ Office of the United Nations High Commissioner for Human Rights, ‘Report on the human rights situation in Ukraine. 16 August to 15 November 2017’, 2017, <https://www.ohchr.org/Documents/Countries/UA/UAReport20th_EN.pdf> [accessed 3 April 2021], p.14.

³⁹ ‘Profits and Punishment: Prisons of the Donbas’.

⁴⁰ Justice for Peace in Donbas Coalition, ‘The Prisons of Luhansk: The Batman’s Basement’, 25 February 2016, <https://jfp.org.ua/rights/porushennia/violation_categories/nezakonni-mistsia-nesvobody/rights_violations/pidval_betmena?locale=en> [accessed 5 April 2021].

⁴¹ Justice for Peace in Donbas Coalition, ‘On the 6th Anniversary of the Liberation of Sloviansk, Human Rights Activists Uncovered the Crimes During the Occupation of the City’, 6 July 2020, <https://jfp.org.ua/rights/porushennia/violation_categories/rabstvo-ta-prymusova-pratsia/articles/do-6-richnytsi-zvlnennia-slovianska-pravozakhysnyky-rozpovily-pro-zlochyny-yaki-vidbuvalys-pid-chas-okupatsii-mista, [accessed 7 April 2021].

⁴² Center for Civil Liberties, ‘Violations of human rights and international crimes during the war in the Donbass. Almanac of monitoring reports 2020’, 5 November 2020, <https://ccl.org.ua/wp-content/uploads/2020/11/CombineReportEng2020_CCL_MF_Web.pdf>, [accessed 13 April 2021], p.8.

Nor is the physical health of prisoners taken any more seriously: many former prisoners testify to having been made to perform dangerous tasks for the furthering of the military operations of the occupying regimes. Prisoners of Molodizhny quarter 20A were made to dig trenches, repair military equipment, build barricades and load sandbags.⁴³ Moreover, during the occupation of Sloviansk by the DPR, prisoners were engaged in strengthening the combat positions of occupying forces, working directly on the front line.⁴⁴ The Center for Civil Liberties additionally reports that detainees have been made to fight for the LPR and DPR.⁴⁵ The involvement in military operations demonstrates complete disregard for the international norms outlined in Chapter II, severely endangering the safety of prisoners for the gain of their captors.

Forced prison labour in these territories is thus principally threefold in its purpose: industrial work for economic profit; labour designed to cause psychological harm; and work for military advancement. The multiplicity of these purposes is an additional cause for concern, suggesting they are key to the survival of the DPR and LPR regimes.

(iv) Coercion and punishment

The very nature of forced labour means that it not undertaken voluntarily, rendering coercion both necessary to its continuation, and commonplace. In the detention centres in question, this takes both physical and psychological forms, with rights to food, water, medical care and legal assistance becoming conditional, rather than fundamental and inviolable. Some institutions in the LPR, for instance, ‘pay’ prisoners for their work with permission to receive visits from family,⁴⁶ while other testimonies note that on occasion, only those who had worked that day were given food.⁴⁷ From all of the sources examined, the only case found of prisoners receiving any kind of ‘reimbursement’ for their work beyond the enjoyment of at least some of

⁴³ Justice for Peace in Donbas Coalition, ‘The Prisons of Luhansk: The Batman’s Basement’.

⁴⁴ Justice for Peace in Donbas Coalition, ‘On the 6th Anniversary of the Liberation of Sloviansk, Human Rights Activists Uncovered the Crimes During the Occupation of the City’.

⁴⁵ Center for Civil Liberties, ‘Violations of human rights and international crimes during the war in the Donbass. Almanac of monitoring reports 2020’, p.8.

⁴⁶ Eastern Human Rights Group, ‘Monitoring Review of Human Rights Violation in Detention Facilities in Certain Parts of Donetsk and Lugansk Regions’, September 2016, p.8.

⁴⁷ Justice for Peace in Donbas Coalition, ‘Prisons and torture houses of Luhansk: Regional state administration’, 5 April 2016, <https://jfp.org.ua/rights/porushennia/violation_categories/nezakonni-mistsia-nesvobody/rights_violations/lugansk_oda?locale=en>, [accessed 5 April 2021].

their human rights is that of certain LPR prisons giving their detainees a ‘salary’ of five cigarettes per day.⁴⁸ While not paying prisoners for work is not unheard of across the world, the use of labour as a condition for the enjoyment of certain rights goes beyond simply not paying prisoners. As a result, when used in this way, forced prison labour becomes a punishment in itself.

Psychological forms of coercion are no less common, and no less brutal in their manifestations. A former prisoner of the LPR underlines that the administration’s process of selecting prisoners for work created an atmosphere of fear, dividing the prisoners into ‘takeable’ and ‘un-takeable’, for unknown reasons: ‘Going for work was a sort of privilege. You belong to a certain category. If you were ‘untakeable’ [...] your situation was bad’.⁴⁹ Furthermore, conditions within places of detention are regularly so appalling that, perversely, detainees report feeling a sense of relief at being allowed to leave their cells, even if it is only to undertake hard labour.⁵⁰ Routine psychological manipulation therefore forms an essential component of prison labour regimes in the so-called DPR and LPR, encouraging detainees to accept even the hardest of labour and violations of their own rights.

If these methods fail to achieve their purpose, punishment for refusing to carry out forced labour is severe. The Eastern Human Rights Group has reported a three-step system for punishment for refusal to work in occupied parts of Luhansk: (1) 10 to 100 days in solitary confinement; (2) cancelling visits and the receiving of parcels from relatives; (3) beating and torture.⁵¹ It is important to note, however, that punishment can be erratic and can vary greatly between institutions, according to the whims of the guards. One prisoner of the LPR was punished for refusal to work by being placed in a ‘punishment cell’ for three days, for the duration of which he was not even brought water. As a result of this, he subsequently agreed to work.⁵² The threat of punishment is consequently such a fear-inducing prospect that prisoners are much more willing to accept forced labour. Punishment for refusal to partake in prison labour is supported by pseudo-legal mechanisms declared by the so-called authorities.

⁴⁸ Eastern Human Rights Group, ‘Monitoring Review of Human Rights Violation in Detention Facilities in Certain Parts of Donetsk and Lugansk Regions’, September 2016, p.8.

⁴⁹ Justice for Peace in Donbas Coalition, ‘Prisons and torture houses of Luhansk: Regional state administration’.

⁵⁰ Justice for Peace in Donbas Coalition, ‘The Prisons of Luhansk: The Batman’s Basement’.

⁵¹ Eastern Human Rights Group, ‘Monitoring Review of Human Rights Violations in the Field of Freedom Deprivation on Certain Areas of Donetsk and Lugansk Region’, January 2018, p.18.

⁵² Eastern Human Rights Group, ‘Monitoring Review of Human Rights Violation in Detention Facilities in Certain Parts of Donetsk and Lugansk Regions’, September 2016, p.10

For instance, the LPR issued a ‘Penal Enforcement Code’ on 15 July 2015, which requires all those sentenced to deprivation of liberty to work on jobs determined by the prison administration. Refusal to work is a violation of the ‘established procedure for serving a sentence’, according to Part 1, Article 116, and may entail the imposition of penalties.⁵³ Although these ‘legal systems’ are not recognised as complying with international requirements, and sentencing is highly unregulated, the authorities of the DPR and LPR nonetheless therefore afford themselves great powers for justification of the infringement of prisoners’ human rights.

(v) Accompanying torture and other ill-treatment

The facts surrounding forced prison labour in occupied Ukrainian territories are all the more alarming given that they are routinely accompanied by ill-treatment and torture, both physical and psychological. This must be examined separately to methods of coercion and punishment, as the goals are different: while coercion and punishment are employed in order to convince prisoners to work, torture and ill-treatment often have a less clearly discernible aim, depending on the exact circumstances of the detention centre and those in charge. Whilst torture is often undertaken with what can only be assumed to be the goal of repressing prisoners, encouraging obedience and inciting fear of authorities, many cases have been recorded of torture being carried out in order that prisoners confess to crimes which they have not committed.

This latter, pseudo-judicial objective of torture through the extraction of confessions feeds directly into the cycle of forced labour by justifying the continued detention of high numbers of prisoners. One such example was recorded by Amnesty International and Human Rights Watch in 2020, in which DPR ‘officials’ at Izoliatsiia detention centre used ‘electric shocks, hanging by handcuffs from a grate, beating, and waterboarding’, in order to coerce a detainee into signing a confession.⁵⁴ *Ukrainska Pravda* provide further evidence that detainees in occupied territories are beaten and tortured with electric shocks in order that they ‘confess’

⁵³ Eastern Human Rights Group, ‘Monitoring Review of Human Rights Violations in the Field of Freedom Deprivation on Certain Areas of Donetsk and Lugansk Region’, January 2018, pp.10, 18.

⁵⁴ Amnesty International and Human Rights Watch, “‘You Don’t Exist’: Arbitrary Detentions, Enforced Disappearances, and Torture in Eastern Ukraine’, pp.5-6.

to charges.⁵⁵ The focus on extracting confessions through the crudest means at first appears difficult to explain, since neither of the so-called republics use internationally-recognised legal systems, and will therefore not gain international respect by having their detainees confess to crimes. However, while confessions may serve partly to justify prisoners' continued detention, it is most likely that they primarily serve the prison guards, with the 'successful' extraction of a 'confession' justifying their treatment of prisoners in their own minds, and proving to their superiors that no mistakes have been made in arrests.

Several former detainees have pointed out that the severity of torture in these detention centres has an additional consequence which feeds the cycle of forced labour: hearing or seeing torture take place, as well as the physical discomfort of cells in which prisoners are kept, increases prisoners' willingness to accept forced labour. One former prisoner of the since-destroyed Molodizhny quarter 20A in the LPR noted that, 'People happily went to work'.⁵⁶ The reason for this, despite poor working conditions, was that it was, 'an easier challenge than sitting in the basement for days on end'.⁵⁷ This was not only due to physical discomfort and fear for oneself, but also due to psychological torment: one former detainee stated that, 'It was hard to sit in the basement and listen to the sounds of torture'.⁵⁸

Aside from any more concrete aims, the widespread nature of torture in these institutions, in which torture takes place every day,⁵⁹ suggests that there is a wider disregard for prisoners' wellbeing and an intention to break down their psychological resolve. Actions often seem to be undertaken in knowledge of the trauma this will likely provoke: *Ukrainska Pravda* noted in 2020 that the prisoners at Izoliatsiia are subject to mock executions and are raped in front of others.⁶⁰ Furthermore, prisoners are kept under twenty-four-hour video surveillance and are kept in artificially lit cells days and night.⁶¹ Stanislav Asieiev reports that before autumn 2017, the video recordings of torture sessions would be displayed to detainees

⁵⁵ Media Initiative for Human Rights, 'Страх та смерть в "Ізоляції". Як катують людей у підвалах Донецька', *Українська Правда*, 24 February 2020, <<https://www.pravda.com.ua/articles/2020/02/24/7241046/>>, [accessed 9 April 2021].

⁵⁶ Justice for Peace in Donbas Coalition, 'The Prisons of Luhansk: The Batman's Basement'.

⁵⁷ Ibid.

⁵⁸ Ibid.

⁵⁹ Stanislav Asieiev, *Світлий шлях. Історія одного концтабору*, trans. Russian to Ukrainian by Viktoriia Stakh, Видавництво Старого Лева, Lviv: 2021 pp.64-5.

⁶⁰ Media Initiative for Human Rights, 'Страх та смерть в "Ізоляції". Як катують людей у підвалах Донецька'.

⁶¹ Stanislav Asieiev, *Світлий шлях. Історія одного концтабору*, pp.15, 12–13.

on a screen and with full volume.⁶² Thus, methods of torture are not only physically dangerous for prisoners, but also pose an acute psychological threat.

Physical injury is, of course, widespread: according to high-profile former prisoner of Izoliatsiia, Stanislav Pechonkin, torture regularly includes electric shocks, with wires being attached to hands, feet, earlobes, and even genitals and breasts. He equally reports that people often lose consciousness from the pain and sustain scars from the burns.⁶³ Moreover, Stanislav Asieiev recalls being forbidden to make a sound during torture, under the threat of a piece of his nose being cut off.⁶⁴ Former detainees have equally attested to the constant presence of a doctor during torture sessions, purportedly serving to revive detainees who lose consciousness in the process of torture.⁶⁵ Testimony has also been given that sometimes, when prison guards were drunk, they went too far in their beatings and killed prisoners.⁶⁶ But this treatment is not just reserved for those deemed to be pro-Ukraine. Former prisoner testimonies purport that former combatants from the armed groups are also often detained. Stanislav Asieiev even suggests that treatment of such persons can be worse than that of others, since ‘their own’ can be used as ‘training material’, as there will be no consequences for what happens to them.⁶⁷ In addition, disregard for prisoners’ lives extends beyond the torture chamber: prisoners are often not moved to safety if prisons come under shelling.⁶⁸

It is therefore no exaggeration to state that an attitude of complete disregard for the value of human life, whereby prisoners become disposable, plagues both the DPR and LPR. The various methods of torture both contribute to and result from the vicious circle of forced prison labour: torture is used to justify detention and thus contributes to high prisoner numbers, creating a situation where the regimes resort to further torture for control of large prisoner populations. In turn, the lack of accountability to or cooperation with international

⁶² Ibid., p.64.

⁶³ Media Initiative for Human Rights, ‘Страх та смерть в “Ізоляції”. Як катують людей у підвалах Донецька’.

⁶⁴ Stanislav Asieiev, *Світлий шлях. Історія одного концтабору*, p.97.

⁶⁵ Media Initiative for Human Rights, ‘Страх та смерть в “Ізоляції”. Як катують людей у підвалах Донецька’.

⁶⁶ Halya Coynash, “‘In my native Donetsk somebody is being savagely tortured right now’”, *Kharkiv Human Rights Protection Group*, 3 March 2020, <<http://khp.org/en/1583020294>>, [accessed 2 April 2021].

⁶⁷ Media Initiative for Human Rights, ‘Страх та смерть в “Ізоляції”. Як катують людей у підвалах Донецька’.

⁶⁸ Halya Coynash, ‘Prisoners die in unexplained circumstances in Russian-controlled ‘Luhansk republic’ prisons’, 11 September 2018, <<http://khp.org/en/1536409438>> [accessed 14 April 2021].

organisations renders prisoner exchanges one of the only feasible paths for dialogue, which only perpetuates the regimes' desire for a large prisoner population.

(vi) The economy of forced prison labour

The most obvious impetus for forced labour in cases around the world is, of course, economic profit. In this, the situation of prisoners in occupied Donetsk and Luhansk does not differ. The Eastern Human Rights Group claims in a 2016 report that the profit from the sale of products manufactured by prisoners in occupied territories is in the range of \$300,000 to \$500,000 per month.⁶⁹ This is a marked increase from the reported \$100,000 made per month on prison labour by the Ukrainian government in 2012,⁷⁰ especially when it is considered that that figure serves for the entire Ukrainian territory, of which occupied Donetsk and Luhansk are a very small proportion, 7%. This substantial difference is likely owed to the increased profit margin when forced, non-remunerated labour is utilised. This creates a profit-making advantage for the regimes: the Eastern Human Rights Group reported in 2018 that the low production cost from prison labour makes it possible to find the sales of manufactured products at prices below market prices'.⁷¹ The enhanced profits made possible by forced prison labour is not, however, put towards improving prison living or working conditions, but is instead distributed among regime leadership, at least in the case of the LPR.⁷² Prison administrations thus have little reason to eliminate forced labour; in many ways it is what sustains them.

Essential to this equation is a large prisoner population. Here we encounter the second economic motivation for the use of forced labour in these territories: high prisoner numbers are necessary for the output of goods and a strong economic profit, and at the same time, a large prisoner population necessitates high numbers of prison guards. In turn, members of prison administrations may actively seek to maintain high numbers of prisoners in order to guarantee their job security, adversely affecting the administration of justice. This increases

⁶⁹ Eastern Human Rights Group, 'Monitoring Review of Human Rights Violation in Detention Facilities in Certain Parts of Donetsk and Lugansk Regions', September 2016, p.8.

⁷⁰ 'Profits and Punishment: Prisons of the Donbas'.

⁷¹ Eastern Human Rights Group, 'Monitoring Review of Human Rights Violations in the Field of Freedom Deprivation on Certain Areas of Donetsk and Lugansk Region', January 2018, p.11.

⁷² Eastern Human Rights Group, 'Monitoring Review of Human Rights Violation in Detention Facilities in Certain Parts of Donetsk and Lugansk Regions', September 2016, p.8.

the reliance on and use of forced labour in order to control such high prisoner numbers, creating a vicious circle. A former detainee of the LPR directly alluded to this after his release:

'The administration is keen to hang onto every 'old' con, given that [...] Ukraine has stopped sending its citizens to serve their stretch there, and there aren't enough inmates in the 'LPR' and 'DNR' to justify the number of staff. And if there are no cons left, where are they going to find work?'.⁷³

It can thus be concluded that economic factors are crucial to the cycle of forced prison labour in Ukraine's occupied territories, since the double incentives of economic profit and employment security lead to the regimes relying on forced labour in order to continue, given that they are forbidden from trading with the vast majority of countries. The Eastern Human Rights Group has even suggested that the profit made from forced labour in these territories is the principal problem in securing the return of Ukrainian citizens to government-controlled territories.⁷⁴ The effects of this reliance on forced prison labour therefore have manifold effects, incentivising the practice of detaining prisoners beyond the length of their sentences and by arresting a steady supply of new prisoners on often arbitrary charges.

(vii) Prisoner exchanges: a solution or a perpetuation of the problem?

A large prisoner population is not just sought for economic reasons: another crucial factor is that of the increasingly common practice of prisoner exchanges. Three prisoner exchanges have taken place between Ukraine and Russia since 2019, and while they have been praised as a first step towards ending hostilities, any benefit is arguably temporary. This is because exchanges unintentionally reinforce a reliance on forced labour and indirectly encourage related human rights abuses and manipulations in the administration of justice in the occupied territories.

⁷³ Oksana Trufanova, 'How prisoners in Ukraine's occupied territories live, work and survive', 24 July 2018, <<https://www.opendemocracy.net/en/odr/prisoners-of-the-donbas/>>, [accessed 2 April 2021].

⁷⁴ Eastern Human Rights Group, 'Monitoring Review of Human Rights Violation in Detention Facilities in Certain Parts of Donetsk and Lugansk Regions', September 2016, p.8.

One element of this is that prisoner exchanges can provide an additional incentive for high prisoner numbers and the arbitrary arrest of civilians, in order to use them as ‘bargaining chips’. Amnesty International and Human Rights Watch reported in 2016 that in all the cases of detainees in occupied territories that they investigated, the release of civilian detainees was at some point discussed in the context of prisoner exchanges, and that half of the cases did indeed result in the prisoner being exchanged. Consequently, they noted their ‘serious concerns’ regarding the possibility that civilians are being detained to be used as ‘currency’ for potential prisoner exchanges.⁷⁵ This is in addition to an OHCHR report from 1 August 2020 to 31 January 2021, which documented 12 cases of conflict-related detention in the territories controlled by the DPR alone in this time frame. The ‘charges’ given to these individuals included offences such as ‘espionage’, ‘high treason’, ‘organization of illegal armed group or participation in it’, and ‘hooliganism’.⁷⁶ Given the limited access of international organisations to these territories, it can be expected that the true number of such detentions is considerably higher. Arbitrary detention is therefore directly related to prisoner exchanges. The detention of civilians for the purposes of prisoner exchanges is clearly prohibited in international law, as it constitutes hostage-taking.⁷⁷ The prevalence of this in the occupied territories suggests that prisoner exchanges are not the step in the right direction they are often purported to be.

There is a further risk associated with prisoner exchanges, namely that they encourage undermining of the rule of law by allowing those responsible for crimes to escape due accountability. For this reason, they have already proved controversial in Ukraine, as conditions from the Russian Federation have included the release of several prisoners held by Ukraine held on charges related to murdering protestors in Kyiv in 2013 and 2014. Furthermore, a 2019 prisoner exchange involved the release of a ‘person of interest’ over the downing of flight MH17, which resulted in the deaths of 298 people, to Russia.⁷⁸ Former members of the Berkut, Ukrainian riot police accused of killing 48 people during the Revolution of Dignity in February 2014, were also released to Russia in 2019.⁷⁹ This is in stark

⁷⁵ Amnesty International and Human Rights Watch, “‘You Don’t Exist’: Arbitrary Detentions, Enforced Disappearances, and Torture in Eastern Ukraine, p.6.

⁷⁶ Office of the United Nations High Commissioner for Human Rights, 11 March 2021, ‘Report on the human rights situation in Ukraine. 1 August 2020 – 31 January 2021’, 2021, <<https://www.ohchr.org/Documents/Countries/UA/31stReportUkraine-en.pdf>>, [3 April 2021], p.12.

⁷⁷ Amnesty International and Human Rights Watch, “‘You Don’t Exist’: Arbitrary Detentions, Enforced Disappearances, and Torture in Eastern Ukraine, 21 July 2016, p.12.

⁷⁸ ‘Ukraine and pro-Russian separatists exchange prisoners’, 29 December 2019, <<https://www.bbc.com/news/world-europe-50938894>>, [accessed 22 April 2021].

⁷⁹ Ibid.

contrast to the prisoners returned to Ukraine in these exchanges, all of whom were held by Russia on ‘fake or trumped up charges’.⁸⁰ Therefore, not only do prisoner exchanges fuel the DPR and LPR’s economic dependency on prison labour, but they also tend to be deeply imbalanced, and fail to uphold the principle of accountability.

Aside from this, prisoner exchanges may inadvertently encourage the occupying regimes to continue their cycle of forced prison labour and high prisoner numbers, since the release of their most high-profile prisoners reduces media interest and international pressure.⁸¹ Many of those who have been released thus far have been the subject of considerable international media attention, further suggesting that inclusion in a prisoner exchange is not a realistic possibility for all detainees in the DPR and LPR. Thus, prisoner exchanges risk making the majority of these prisoners even more invisible than they currently are.

Behind the positive image created by prisoner exchanges, they therefore actually exacerbate, rather than aid any long-term progress in eliminating the cycle of forced prison labour. While exchanges are one of the only ways in which the DPR and LPR engage with international mediation efforts, they arguably actually benefit the occupying authorities by reinforcing their systemic use of forced prison labour. In a situation of greatly restricted international monitoring of the DPR and LPR authorities, with the OSCE Special Monitoring Mission regularly coming under fire and being subject to GPS signal interference,⁸² the priority going forward must be taking steps which truly benefit the majority of victims, rather than simply giving an image of goodwill by saving the lucky few.

⁸⁰ Melinda Haring, ‘Q&A: What does Ukraine-Russia prisoner swap mean?’, 8 September 2019, <<https://www.atlanticcouncil.org/blogs/ukrainealert/qa-what-does-ukraine-russia-prisoner-swap-mean/>>, [accessed 28 June 2021].

⁸¹ Iryna Matviyishyn, ‘What price did Ukraine pay for prisoner exchange?’, 8 September 2019, <<https://www.atlanticcouncil.org/blogs/ukrainealert/what-price-did-ukraine-pay-for-prisoner-exchange/>>, [accessed 22 April 2021].

⁸² United Nations Security Council ‘Eastern Ukraine Situation Will Remain Fragile without Means to Calm Mounting Tensions, Under-Secretary-General Tells Security Council’, 11 February 2021, SC/14434, <<https://www.un.org/press/en/2021/sc14434.doc.htm>>, [accessed 1 July 2021].

Chapter IV

Establishing Responsibility

The question of responsibility and, more precisely, accountability, for forced labour in the DPR and LPR is a complicated one, given the unrecognised nature of the self-declared authorities. This section shall first address questions of the liability of the Russian Federation, followed by the responsibility of the armed non-State groups under international humanitarian law.

Despite the claims of the Russian government to the contrary, there is now a plethora of evidence from independent sources demonstrating that Russia plays a direct role in the conflict. This includes, for example, evidence of commanders ordering Russian soldiers to conceal the identifying features of military vehicles, to remove insignia from uniforms, and to travel across the border to join separatist forces in Ukraine.⁸³ Along with the aforementioned finding of an international armed conflict by the International Criminal Court, the Parliamentary Assembly of the Council of Europe even declared that the Russian Federation exercises *de facto* control over these territories, and that the so-called DPR and LPR are ‘established, supported and effectively controlled by the Russian Federation’.⁸⁴

However, as previously mentioned, the question of whether the Russian Federation exercises effective control over the non-government-controlled parts of eastern Ukraine according to international law is still being considered by the International Criminal Court.⁸⁵ If the Russian Federation is found to exercise effective control over armed groups in Ukraine’s occupied territories, it will bear responsibility for the war crimes committed by such groups. The Tadić International Criminal Tribunal for the former Yugoslavia case offers a useful precedent for war by proxy, when a state controls a non-state armed group, converting what is *prima facie* a non-international armed conflict into an international one.⁸⁶ The ICTY concluded in the Tadić case that where a structured group is concerned, the overall control of the group

⁸³ Maksymillian Czuperski et al., ‘Hiding in Plain Sight: Putin’s War in Ukraine’, https://www.atlanticcouncil.org/wp-content/uploads/2019/08/HPS_English.pdf, (Washington, DC: *Atlantic Council*, 2015), [accessed 23 May 2021], p.3.

⁸⁴ Parliamentary Assembly of the Council of Europe, ‘Legal remedies for human rights violations on the Ukrainian territories outside the control of the Ukrainian authorities’, Resolution 2133 (2016), <<http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=23167>>, [accessed 2 July 2021].

⁸⁵ Dmytro Kuleba, ‘International investigation into Ukraine war crimes is Kremlin’s worst nightmare’.

⁸⁶ Tom Gal, ‘Unexplored outcomes of Tadić: applicability of the law of occupation to war by proxy’, *Journal of International Criminal Justice*, 2014-03-01, Vol. 12 (1), Oxford: Oxford University Press, p.59.

by a third state renders the conflict international and the group's actions attributable to the third state.⁸⁷ The ICTY therefore set a precedent for provisions traditionally applicable only to states during inter-state armed conflicts, to apply as well to non-state actors acting as proxies.⁸⁸ Specifically, it allows for the application of the Geneva Conventions to non-state armed groups.⁸⁹ This therefore offers a promising avenue for justice if Russia is found to exercise overall control over DPR and LPR armed groups. In this case, the relevant conventions of the International Labour Organization would also be applicable, with Russia bearing responsibility as a signatory.

However, if Russia is not found to exercise overall control over armed groups in the occupied territories, it is possible to address human rights abuses through the responsibility of the armed groups themselves. For instance, United Nations human rights experts have stated that non-state armed groups can have human rights obligations: 'at a minimum, armed non-State actors exercising either government-like functions or *de facto* control over territory and population must respect and protect the human rights of individuals and groups'.⁹⁰ Thus, the capacity of a non-state armed group can be grounds for human rights obligations, a view supported by, for example, the Human Rights Council of the United Nations,⁹¹ as well as former Special Rapporteur on extrajudicial, summary or arbitrary executions, Agnès Callamard.⁹²

Despite this, in order to pursue this path, the hesitancy of the international community will have to be overcome. This hesitation can be partly attributed to fears that recognising that non-state armed groups can have the same human rights obligations as states would be tantamount to a recognition of their legitimacy. Nevertheless, human rights experts have repeatedly highlighted that human rights obligations do not depend upon or affect the legitimacy of actors. Agnès Callamard, for example, noted in 2018 that 'the attribution of

⁸⁷ Ibid., p.61.

⁸⁸ Ibid., p.63.

⁸⁹ Ibid.

⁹⁰ United Nations Human Rights. Office of the High Commissioner, 'Joint Statement by independent United Nations human rights experts* on human rights responsibilities of armed non-State actors', 25 February 2021, <<https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=26797&LangID=E>>, [accessed 19 May 2021].

⁹¹ Ibid.

⁹² United Nations Human Rights Council, 'Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on armed non-State actors: the protection of the right to life', A/HRC/38/44, 2018, <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G20/338/07/PDF/G2033807.pdf?OpenElement>>, [accessed 21 June 2021], p.3.

human rights obligations does not validate armed non-State actors' authority',⁹³ a view echoed in 2005 by Philip Alston, former UN Special Rapporteur on extrajudicial, summary or arbitrary execution, who emphasised that the international community's human rights expectations operate to protect people, rather than offering a judgement of the legitimacy of those involved.⁹⁴ This suggests that if the international legal community continues to hesitate to act in a realistic manner, it risks limiting its own efficacy and mandate. A human rights-centred approach therefore seems the most promising, by placing the rights of those under control of armed groups before legal technicalities on the status or nature of the perpetrator(s).

Thus, it is reasonable to suggest that international law conventions and international humanitarian law can be utilised in order to hold the so-called DPR and LPR authorities accountable. The two principal avenues cover both the possibility that Russia can be held responsible for the actions of the non-state armed groups in the occupied territories, and that these groups can themselves be held accountable if Russia is not found to exercise overall control. However, this should only form one element of the approach adopted by the international community going forward, as shall be further explored in the final section of this thesis.

⁹³ Ibid.

⁹⁴ United Nations Economic and Social Council, 'Civil and Political Rights, Including the Question of Disappearances and Summary Executions', E/CN.4/2006/53/Add.5/, 2006, <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G06/121/16/PDF/G0612116.pdf?OpenElement>>, [accessed 21 June 2021], p.11.

Chapter V

Looking for Solutions

As this analysis has identified, the vicious circle feeding the use of prison labour in the occupied territories has more than one root cause, meaning that efforts to eliminate the practice cannot be so simple as removing one factor. Moreover, as of yet, mechanisms for applying international pressure on the regimes in these territories have resulted in little, if any, tangible improvement. Sanctions have been imposed on Russia, as well as individuals and legal entities connected to the DPR and LPR, such as ‘ministers’ of the regimes, since the earliest years of the conflict, by states including Ukraine, EU members States and the United States.⁹⁵ According to former US Treasury Secretary Steven Mnuchin, these sanctions are intended to ‘maintain pressure on Russia to work toward a diplomatic solution’, to guarantee Ukrainian sovereignty, and to pressure Russia to meet its obligations under the Minsk agreements.⁹⁶ This has, of course, been limited by the United Nations’ lack of sanctions on the self-declared republics, due to Russia’s power of veto. Nevertheless, many sanctions from states or groups of states have been in place for over half a decade, and yet the regimes show no signs of increasing willingness to engage in humanitarian monitoring missions.

As mentioned above, sanctions are often put in place in an effort to push those implicated to implement the Minsk Agreements for ending the conflict. The ‘Package of Measures for the Implementation of the Minsk Agreements’, signed on 12 February 2015 by representatives from the OSCE, Russia, Ukraine, the DPR and LPR, is the working framework for attempts to end the conflict,⁹⁷ and yet it poses several issues for progress in the rights of prisoners. One of the major issues is that, although the document was signed by Russia’s ambassador to Ukraine, it does not mention Russia, allowing the latter to continue to deny responsibility for its implementation. While Article 6, for the exchange of hostages and unlawfully detained persons, has been implemented to a degree, Article 7, on humanitarian assistance and access, has not had the same level of engagement from Russia and the so-called DPR and LPR authorities. This is a major obstacle in ensuring accountability, since it creates

⁹⁵ United States Government, Department of the Treasury, Press Release, 20 June 2017, ‘Treasury Designates Individuals and Entities Involved in the Ongoing Conflict in Ukraine’, <https://www.treasury.gov/press-center/press-releases/pages/sm0114.aspx>, [accessed 27 June 2021].

⁹⁶ Ibid.

⁹⁷ Allan, Duncan, ‘The Minsk Conundrum: Western Policy and Russia’s War in Eastern Ukraine’, 27 May 2020, <<https://www.chathamhouse.org/2020/05/minsk-conundrum-western-policy-and-russias-war-eastern-ukraine-0/minsk-2-agreement>>, [accessed 27 June 2021].

a vacuum of reliable information on the situation on the ground in these territories, which only works to the advantage of the self-declared authorities. The findings of monitoring missions could be used against the so-called republics in international legal cases, which no doubt contributes to their unwillingness to cooperate with such missions.

Currently, the lack of international monitoring in the relevant territories allows the perpetrators of human rights abuses a level of invisibility and, consequently, a freedom from accountability. It is thus of the greatest importance that international monitoring missions be allowed to go ahead in these territories, in order to fully and impartially assess the situation. For this to occur, it will be necessary for the occupying regimes to cooperate with international organisations. One reason why this has not yet happened is the self-declared republics' support from the Russian Federation, which provides a market for goods and raw materials, meaning that the so-called republics are not isolated from economic support. It is not unreasonable to suggest that without economic and military support from the Russian Federation, the occupying authorities would be more willing to engage with monitoring groups, finding themselves in need of economic aid from outside of their territories. Returning to the previous chapter's legal arguments, it is possible that if Russia were found to hold responsibilities for human rights in the occupied territories, the Russian authorities may become less willing to offer their support to the armed groups operating there.

In the absence of such a step, it is essential that Ukraine and the international community use any leverage they can. One of the only feasible ways in which this can be done is by opposing prisoner exchanges. Given the aforementioned problems associated with prisoner exchanges, and their direct contribution to the cycle of forced labour, they arguably only perpetuate abuses of prisoners' rights, while 'saving' very few. The key problem is that prisoner exchanges contribute to a situation in which it 'makes sense', both economically and in terms of international power dynamics, for occupying authorities to continue to use forced prison labour. Thus, despite the temptation for the states and armed groups involved to partake in prisoner exchanges in order to create a positive public image, it is crucial that they are not carried out without due concessions from the occupying authorities, which could include agreements on permitting greater access for monitoring missions, for instance.

In light of the above issues, a solution must be found which will effectively support the rights of victims, as well as the right of the public to know, without relying on the final outcome

of the international conflict, whatever that may be. If the rights of prisoners can be separated from depending on the outcome of the conflict, and can be viewed through the lens of human rights law rather than a power game of legitimacy of opposing states and armed groups, it may be possible to truly improve the situation of prisoners by bringing justice to those responsible for abuses, and to overcome the current gap of liability and protection.

To conclude, despite restrictions on monitoring, witness testimony that has emerged in recent years and reports from human rights groups operating on the ground, together form a picture of a systemic, cyclical use of forced prison labour, currently existing beyond the intervention of the international community. This analysis has identified two major obstacles to eliminating forced prison labour in Ukraine's occupied territories: economic profit and the use of prisoner exchanges. These factors are particularly difficult to overcome since they are woven into the very functioning of the so-called republics: both factors encourage the maintenance of a large prisoner population, feeding the cycle of forced labour, but also offering financial benefits and political bargaining power to the administrations. Consequently, it must be emphasised that the root of the problem goes beyond the prison system. Forced labour is built into the functioning of the so-called republics, and it brings with it a reliance on inhuman methods of torture and coercion which on their own would be enough to warrant international condemnation. It is no exaggeration to state that systems of governance or, more precisely, lack thereof, are rotten in both the DPR and LPR. While it is therefore difficult to envisage great improvements while the current regimes remain in power, in the absence of a conclusion to the conflict the only way forward is pushing for greater accountability and openness of the regimes. International humanitarian law routes offer a promising way forward, and at the very least may discourage the Russian Federation from further support of the self-declared republics. But the highest priority in the short term should be awarded to pressing for unrestricted monitoring of the human rights situation in these territories. Only with comprehensive, impartial information will victims of forced prison labour receive justice, and future abuses be prevented from occurring under the radar.

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