



Preliminary observations of the United Nations Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions, Dr. Morris Tidball-Binz, at the conclusion of his visit to Ukraine (20-31 May 2024)

1. At the invitation of the Government of Ukraine, the UN Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions, Dr. Morris Tidball-Binz, conducted an official visit to the country from 20 to 31 May 2024.
2. The visit was guided by a spirit of constructive dialogue, framed by the principles of independence, impartiality, objectivity and integrity and followed a victim-centred approach. Dr Tidball-Binz expresses his utmost gratitude to the Government for the excellent cooperation in preparing and facilitating the visit, the openness in sharing information with his mandate and the commitment to continuing the constructive dialogue in follow-up.
3. During his two-week visit, the Special Rapporteur travelled to Kyiv, Chernihiv, Kharkiv, and Dnipro Oblasts. He had the opportunity to meet with the State authorities, including the Minister of Justice, along with heads of the Forensic, penitentiary, and international cooperation departments; Senior Government representatives from the Ministry of Foreign Affairs, the Ministry of Internal Affairs, the Ministry of Defense, and the Ministry of Health and its medical-legal department in Kyiv, Kharkiv, and Dnipro. In addition, the Rapporteur met with the General Prosecutor of Ukraine, and Regional Prosecution Offices in Chernihiv, Kharkiv, and Dnipro, as well as State investigative and security agencies such as the National Police, the Security Service of Ukraine (SBU), the State Bureau of Investigation (SBI), the Commissioner for Missing Persons, and the Coordination Headquarters for the Treatment of Prisoners of War. He also met with the Parliamentary Commissioner for Human Rights (Ombudsman).
4. The Special Rapporteur held meetings with international agencies and organizations, including the International Criminal Court (ICC), the European Union Advisory Mission in Ukraine (EUAM), IDLO, ICMP and ICRC. He also met with national and international human rights related civil society organizations and had meaningful exchanges with survivors and families of victims of severe human rights violations, including to the right to life.
5. The Special Rapporteur is deeply admiring of the courage and perseverance of survivors and families of victims in their relentless pursuit of truth, justice, and dignity. He reiterates his availability and willingness to support them and to assist and advise national institutions in their efforts, within his capacity as a UN Special Rapporteur and a forensic doctor. He is also keen to continue the constructive dialogue with the Government towards the implementation of his recommendations and the reinforcement of national justice processes.

I. Background

6. Over ten years ago, in March 2014, the Russian Federation illegally annexed the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol, Ukraine (hereinafter “Crimea”), which marked the beginning of the invasion and was denounced by the international community. The UN General Assembly, on 27 March 2014, affirmed its commitment to the sovereignty, political independence, unity, and territorial integrity of Ukraine within its internationally recognized borders and, among other things, underscored that the referendum held on 16 March had “no validity” and could not form the basis for any alteration of the status of Crimea (resolution 68/262).
7. The Former Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions visited Ukraine from 8 to 18 September 2015, and reported on the heavy human price of the conflict, resulting in an estimated death toll of more than 9,167 people, 21,044 injured, and 1,000 missing in the course of hostilities.¹ In this context, the report presented to the 32nd session of the Human Rights Council (2016) underscored the importance of identification and communication regarding the deceased in the context of armed conflict,² and praised the role played by the International Committee of the Red Cross (ICRC) in providing technical assistance to all sides with respect to searching for, recovering and identifying mortal remains.³
8. The 2016 report referred to the lack of progress in the investigations and proceedings into the killings that happened in Maidan Square, as well as the killings on 2 May 2014 in Odesa and 9 May 2014 in Mariupol. The recommendations presented included the conclusion of impartial and transparent investigations in these cases, as a matter of priority, the establishment of accountability for loss of life caused and the protection and reparation for victims and their families.
9. The Special Rapporteur endorses the recommendations of his predecessor and reiterates the need to ensure a fully functioning system of rule of law, based on the effective protection of the human rights of all persons living in Ukraine, without discrimination. The investigations into these events, although central in reinforcing public confidence in the criminal justice system, were not the areas of focus for the current visit.

II. The scope of the visit

10. The objective of the two-week visit was to examine how unlawful killings of civilians and soldiers *hors de combat*, resulting from the ongoing armed conflict, are investigated, including targeted killings, extrajudicial executions, deaths in custody, and indiscriminate attacks against civilian population. The visit adopted a victim-centred approach, giving particular attention to the rights of victims and their families to truth, justice and reparation.

¹ See OHCHR, report on the human rights situation in Ukraine, 16 November 2015 to February 2016, para. 6.

² International Committee of the Red Cross, “Ukraine: best practices in dead body recovery discussed in Lugansk” (23 January 2016), available from www.icrc.org/en/document/ukraine-crisis-best-practices-dead-body-recovery-discussed-lugansk.

³ A/HRC/32/39/Add.1, para.55

11. In doing so, the Special Rapporteur assessed the legislative and institutional frameworks in place to effectively investigate and prosecute unlawful killings, including through providing support and assistance to victims and families. He also observed the essential and complementary work of institutions, such as the General and Regional Prosecution Offices, the Medico-Legal Bureaus, and the investigative agencies, in establishing facts, collecting evidence, with a view to bring perpetrators of serious crimes to justice and commence the healing process from the atrocities of the war.

III. Contextual and legal analysis

A. Contextual framework

12. On 24 February 2022, the Russian Federation launched a full-scale land, sea, and air invasion of Ukraine, targeting Ukrainian military assets and cities across the country, causing the death of more than 10 thousand civilians, the vast majority through explosive weapons with indiscriminate effect. Casualties resulting from the armed conflict include men, women, and children, with a disproportionate impact on the elderly. Furthermore, tens of thousands of Ukrainian soldiers died in combat or in the captivity of the Russian Federation leaving behind devastated families looking for truth and reparation, including through the need to search for, recover, identify, and receive the bodies of their deceased loved ones.

B. Legal framework

- **National legal framework**

13. The right to life is guaranteed under Article 27 of the Constitution of Ukraine which states that no one may be arbitrarily deprived of his/her life and that it is a duty of the State to protect human life. Charges related to acts of arbitrary deprivation of life can be brought under a number of articles of the Criminal Code, especially where they are at the core of the offence.⁴ Under the Penal Code of Ukraine, the “planning, preparation, and waging of aggressive war” is criminalized (article 437), as well as the “violation of rules of the warfare,” including murder (article 438.2).

14. In 2018, in response to the increased number of missing persons from the 2014-2015, the Ukraine Parliament adopted the Law of Ukraine on the Legal Status of Missing Persons “to implement Ukraine’s obligations under international law, including IHL, towards missing and dead.”⁵ “The law calls for the creation of a unified registry of missing persons and a commission to coordinate the activities of government agencies involved in tracing and identifying missing persons and providing support for their families.”⁶

⁴ Including articles 115 (intentional homicide as willfully unlawfully inflicting death with aggravating factors, such as particular brutality, mercenary motives, in collusion, based on racial, national or religious intolerance), 116 (intentional homicide committed in a state of strong mental agitation and caused by unlawful violence, systematic harassment or grievous insult of the victim), 117 (infanticide), 118 (murder committed in excess of necessary defence or as a result of excessive use of force during the arrest of an offender), 119 (homicide by negligence); and 120 (driving a person to suicide with aggravating factors, including if the victim was a minor, or was financially or otherwise dependent on the perpetrator, or if there are multiple victims).”

⁵ Law of Ukraine On the Legal Status of Missing Persons, 2018, Ukraine, 12.07.2018, ICRC IHL database.

⁶ <https://ua.usembassy.gov/wp-content/uploads/sites/151/289437.pdf>

15. In addition, on 10 May 2021, bill No. 2689 “On Amendments to Certain Legislative Acts on the Enforcement of International Criminal and Humanitarian Law” was passed with the objective to “eliminate the statute of limitations with regards to crimes of aggression, genocide, crimes against humanity and war crimes, allows for reclassification of such crimes and grants universal jurisdiction in cases involving such crimes.”

- **International legal framework**

16. Ukraine is a party to seven of the nine core human rights instruments, including the International Covenant on Civil and Political Rights (ICCPR), which protects the right to life in its article 6.⁷ In addition, Ukraine has ratified the Convention for the Protection of All Persons from Enforced Disappearance, and the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.

17. As indicated by the Independent International Commission of Inquiry on Ukraine, the situation in Ukraine is an international armed conflict, pursuant to common article 2 of the four Geneva Conventions, owing to the armed hostilities existing between Ukraine and the Russian Federation, through their respective armed forces or other actors acting on their behalf.

18. In this regard, both Ukraine and the Russian Federation are party to the four Geneva Conventions of 1949. Ukraine also acceded to Additional Protocols I, II and III of the Geneva Conventions, while the Russian Federation acceded to Additional Protocols I and II and signed Additional Protocol III. Neither Ukraine nor the Russian Federation are States Parties to the Rome Statute of the ICC. However, Ukraine lodged two declarations accepting ICC jurisdiction with respect to alleged crimes committed on Ukrainian territory from 21 November 2013 onwards.⁸

IV. Documentation and investigations

19. Since Russia’s full-scale invasion, Ukrainian authorities have documented evidence of 128,498 war-related crimes, of which 12,353 related to the unlawful killing of civilians and soldiers hors de combat committed by Russian forces. Due to lack of access to territories under Russian occupation by independent human rights monitoring mechanisms, the real numbers are expected to be much higher.

20. During meetings with the General and Regional Prosecution Offices, as well as security and investigative bodies, such as the Security Service of Ukraine, the State Bureau of Investigations, and the National Police, the authorities shared evidence collected from liberated Ukrainian territories, notably in Chernihiv, Kharkiv, Kherson, and Kyiv regions, of locations used to arbitrarily detain and torture civilians, as well as sites of mass graves, such as in Izium and Bucha. Some bodies recovered were found with their hands tied behind their

⁷ the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the International Covenant on Civil and Political Rights; the Convention on the Elimination of All Forms of Discrimination against Women; the International Convention on the Elimination of All Forms of Racial Discrimination; the International Covenant on Economic, Social and Cultural Rights; the Convention on the Rights of the Child; and the Convention on the Rights of Persons with Disabilities.

⁸ OHCHR Thematic report on killings of civilians – 24 February and 6 April 2022, para.84

backs, and with evidence of close range gunshot wounds to their heads, indicative of summary executions, as well as perimortem trauma consistent with torture.

21. As of May 2024, the Ukrainian authorities have documented evidence against 357 Russian servicemen and affiliates, for involvement in crimes, including of unlawful killing. This led to the indictment of 269 and the conviction of 83 for instances of wilful killing, torture and ill-treatment, under article 438 of the Penal Code. The majority of these criminal proceedings are undertaken in *absentia*. The Special Rapporteur acknowledges the importance of prosecution of war crimes, including unlawful killings, in restoring the dignity of victims and their families. However, he underlines that, in the case of trials in *absentia*, particular attention should be given to ensure the respect of fair trial guarantees for the accused, as provided for under international human rights law, notably the ICCPR and the European Convention on Human Rights.
22. Furthermore, the General Prosecutor's Office of Ukraine collected evidence regarding the extrajudicial execution of Prisoners of War (PoWs) upon their captivity. Criminal proceedings in 22 cases of extrajudicial executions of 48 Ukrainian PoWs have been initiated, and 4 indictments issued.
23. The investigative bodies expressed challenges in investigating war crimes, particularly violations to the right to life, including the lack of access to the occupied territories, the extremely high caseload, the insufficient medical-legal and forensic resources to identify the time, cause and circumstances of death, and the difficulty in collecting DNA samples to identify the victims, due to the condition of the bodies or remains.
24. During the visit, the Special Rapporteur met with families of PoWs from Mariupol, who died in captivity of the Russian forces, due to torture or lack of medical care. He was provided with credible evidence of death under torture, at Vyazma pre-trial detention centre No.2, based on testimonies of returned PoWs, and photographic evidence of bodies of POWs repatriated between November and December 2023, showing signs of torture, mutilation, and depicting traces of tuberculosis infection.
25. In addition, the Special Rapporteur was extremely alarmed by the case of an elder forensic doctor, suffering from a physical disability, in Iziium, who was reportedly executed by a Russian serviceman for refusing to hand over the keys of his car, which he depended upon for mobility. The body of the executed doctor was allegedly taken to Russia, which is depriving the family from their right to mourn their loved ones. The Special Rapporteur notes that criminal proceedings were reportedly initiated against the perpetrator in the Russian Federation and calls for the prosecution and punishment of such heinous crimes, while respecting fair trial principles. He further urges the immediate return of the body to the bereaved family.
26. The Special Rapporteur also takes note of alleged violations to the right to life reportedly committed by agents of the Government of Ukraine or with its acquiescence.⁹ He welcomes the acknowledgement by the General Prosecutor's Office and the commitment to investigate

⁹ OHCHR Thematic report on killings of civilians – 24 February and 6 April 2022, para.101

and prosecute all crimes, in line with obligations under international human rights and international humanitarian law.

- **Medical-legal investigations**

27. As a forensic doctor specialized in the documentation of human rights violations and humanitarian forensic action, the Special Rapporteur paid special attention to the way in which unlawful killings are investigated and documented, including to identify the victims, to help prevent that they become missing persons and to establish the cause, manner and circumstances of their death; and to ensure that families are adequately informed and supported to help overcome the tragic loss of their loved ones.
28. He welcomes the growing recognition among Governmental and inter-governmental institutions, civil society organizations and families of victims, whom he met with during the visit, of the central role and value of Medico-Legal Bureaus' expertise to reliably identify the deceased, determine their cause, manner and circumstances of death and to adequately inform families; and of the need to integrate medico-legal forensic expertise into all investigative, prosecutorial and judicial processes involving potentially unlawful deaths.
29. He also welcomed the awareness among those interviewed about the practical value and need for adopting international standards for the investigation of potentially unlawful deaths, especially the United Nations Minnesota Protocol on the Investigation of Potentially Unlawful Death, which stands as a gold standard for investigating killings, including in armed conflict situations. He noted however that this manual is not available in Ukrainian language and therefore recommended its translation as a matter of priority.
30. He was highly impressed by the remarkable dedication and high professionalism of medico-legal experts whom he met during the visit. He noted that many are working under very challenging conditions and managing a very high caseload as a result of the war. Also, not all Medico-Legal Bureaus benefit from the most adequate facilities, including for the health and safety of staff, and some lack optimal tools and equipment, including, for example, digital X-Ray machines and modern autopsy, storage and refrigeration hardware.
31. The achievement of the Medico-Legal Bureau in the City of Dnipro, including its use of standardized examination and documentation procedures, applying an integrated and family centred model for the analysis and identification of bodies and human remains of those killed, is a model of good practice which deserves and needs to be replicated elsewhere in the country. Its close cooperation with an international organization such as the ICRC, which helped build a national training centre at the same institute, for the examination, documentation and identification of complex cases, including skeletonized human remains and help scale-up the capacity of forensic professional country wide deserves to be fully supported.
32. He learned about and welcomes reforms underway, launched by the Ministry of Health, to centralize the administration of the country's medico-legal services for improving means and resources for medico-legal investigations in Ukraine; the standardization and harmonization of procedures, including for quality assurance and control and the promotion and support for specialized training and scientific research with the aim of up-scaling services nationwide.

He offered his mandate's support, in the form of technical assistance and advisory services, for these welcome reforms.

- **Missing persons and the repatriation of the dead**

33. According to official sources, 62,500 persons have been reported missing since the full-scale invasion in 2022, from whom 41,000 remain missing, and 19,000 have been found or identified. In addition, to-date, 2,000 children are still considered to be missing. The Special Rapporteur recognizes the measures taken to search for the missing, including with the support of international partners, such as the ICRC and the ICMP. Since 2022, 2708 bodies of civilians and servicemen have been repatriated to Ukraine by the Ukrainian authorities, with the support of the ICRC, in full compliance with the IHL obligations, including for the proper and dignified management of the dead.
34. The Special Rapporteur commends the work undertaken by the Commission of Missing Persons under exceptional circumstances, to coordinate the work of forensic and investigative institutions with the objective to identify the dead and establish the fate, whereabouts, circumstances of death, and burial place of missing persons. He welcomes the creation of the "Unified Register for Missing Persons", launched by the Ministry of Internal Affairs, with the Commission of Missing Persons, in May 2023. Such initiatives are considered a good practice in the search for the missing and merits the support of the international community.
35. He also welcomes the plan to create a centralized identification hub in Tsybli, Kyiv region, to ensure the proper processing and admission of forensic medical reports and centralize the tracing and identification of missing persons.

V. Support to victims and their families

36. Thousands of Ukrainian people, civilians and soldiers *hors de combat*, have been unlawfully killed as a result of indiscriminate attacks and targeted killings amounting to grave violations of international human rights and humanitarian law. These violations also cause immense suffering to the bereaved families, who as a result are also victims in need of justice, truth and reparation.
37. The Special Rapporteur welcomes the initiative by the General Prosecutor's Office to create "Victims and Witnesses Coordination Centres" across Ukrainian regions. The first centre was established in Kyiv last year and is mandated with providing assistance and support to the victims and survivors in the course of criminal proceedings and calls on the Ukrainian Government to support the establishment of the eight other regional centres to ensure nationwide access by victims and their families to these services. He also acknowledges the psychological assistance provided through the Coordination Headquarters for the Treatment of Prisoners of War, but learned this is currently insufficient to meet the needs of all victims and their affected families.
38. In addition, the decree (296) of 15 March 2024 providing for "restorative (reintegration) measures, and support to persons who have been deprived of their liberty as a result of the

armed aggression against Ukraine, after their release,” is a positive measure towards recognizing the status of victims and the need to adopt a victim-centred approach.

39. The Special Rapporteur recognizes the significant support required to assist victims through their traumatic experience and recommends expanding the victim-support programs available to include not only victims but also their families, as provided for under international law especially in cases of unlawful killings and disappearances, and not to restrict the assistance provided to one type of victims. During his exchanges with families of victims of unlawful killings, the Special Rapporteur witnessed their extreme state of traumatization and the urgent need to provide them with comprehensive assistance including psycho-social but also help with legal and administrative procedures.
40. In one of the many cases examined by the Special Rapporteur, a Russian indiscriminate attack on a residential house in the city of Synelnykove, Dnipropetrovsk Oblast, killed a family of five persons, including two children of 8 and 14 years old. The only survivor was a 6-year-old child, who will be cared for by his aunt. In this regard, the Special Rapporteur underlines that the support to children traumatized by the loss of their parents should be of particular attention, as well as the support to alleviate any bureaucratic hurdle to other family members, be it legal or administrative. He recognizes the initiatives by local communities and civil society organizations in providing psycho-social assistance, and legal service, and recommends that this type of assistance be systematized, public and accessible to all families of victims, free of charge.

VI. Recommendations

The Special Rapporteur provides the following recommendations to the Ukrainian Government and the International Community:

- Support the effective implementation of the initiative of the Ministry of Health to centralize the administration of Medico-Legal Bureaus for improved support and quality assurance and control of medico-legal services at national level;
- Support the Ministry of Health in ensuring the urgent and sustainable provision of essential equipment (e.g. digital x-Ray machines, modern body storage and refrigeration capacity), sufficient resources and adequate facilities (in particular modern autopsy laboratories which meet highest health and safety standards) for all medico-legal bureaus which so require.
- Support the Bill 6284 for the Creation of a Coordination Council of Forensic Services for the harmonization of standards and practices, coordination and unified quality assurance and control across all forensic service;
- Support and assist the centralization of search of missing persons and identification of the dead under the future National Centralized Identification Hub to be created in Tsybli (Kyiv Oblast), presently under consideration of the Cabinet of Ministers;
- Support the implementation of the Prosecutor General’s Office’s “Investigative and Prosecutorial strategy for International Crimes 2023-2025”;

- Support establishment and full implementation at national level of family liaison and support structures planned by the Prosecutor General's Office (Support PGOs initiative), including its close cooperation with international organizations and agencies (e.g. ICRC, ICMP);
- Support the implementation of Cabinet of Ministers' Decree 296 (15/03/2024) for the Provision of Mental Health and Psychosocial Assistance to Victims of the War (under Ministry of Health), including with the required expertise and resources, and expand the scope of implementation to include all victims of serious violations and their families, including disappearances and unlawful killings. Particular attention is required for ensuring specialized care for particular categories of victims, including children.;
- Help overcome procedural limitations to the provision of international specialized investigative support in the form of direct forensic case-work assistance and expertise, while ensuring that such support is always provided upon request, authorization and under the direction of the relevant jurisdictional authority (i.e. Ministry of Justice, Prosecutor Office, Court). This may require a directive from the Ministry of Justice;
- Step up support for Ukrainian experts and institutions responsible for the investigation, documentation and judicialization of unlawful deaths and help scale-up their capacity where necessary, including with long-term partnerships and collaborative tutoring;
- Urgently translate into Ukrainian language the Revised U.N. Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (the Minnesota Protocol on The Investigation of Potentially Unlawful –Death, 2016);
- Good practices developed and the experience gained in response to the armed conflict (e.g. Dnipro Medico-Legal Bureau and its national forensic training centre; the dignified management and repatriation of bodies of Ukrainian soldiers; the prosecution and judicialization of complex crimes under international law) should be supported and shared with other contexts in need of such knowledge i.e. help “export” Ukrainian experience and know-how for the investigation and documentation of unlawful killings in armed conflict and the care of victims;
- Civil Society Organizations play a critical and irreplaceable role in helping investigate and document unlawful killings from the war and in assisting and supporting victims and their families. They must be vigorously supported.

For the Russian Federation:

- The Special Rapporteur urges the Russian Federation to uphold its obligations under international human rights and humanitarian law and investigate all crimes reportedly committed by its agents.