

Bodies of evidence

Violations of international law concerning the missing and the dead in Ukraine

In recent weeks, reports have emerged from Ukraine of bodies abandoned, mutilated, and piled in mass graves. The attack on a theatre sheltering civilians in Mariupol was further aggravated when Russian soldiers allegedly fired on those attempting to retrieve the wounded and deceased. These actions are violations of international humanitarian law, customary law, human rights law, and criminal law. Both individually and collectively, these sources of law impose specific legal obligations on parties to armed conflict to protect civilians, including the missing, the deceased, and their surviving relatives.

These obligations apply to all parties to the armed conflict in Ukraine, regardless of the allegiance of the civilians concerned. Russia is responsible for protecting any persons it has detained, as well as civilians – both living and dead - in any areas it controls. In areas controlled by Ukraine, including those it has recovered from Russian control, it falls to Ukrainian authorities to ensure that the missing and the dead are treated with dignity. International agencies and civil society can and should assist wherever state capacity to fulfil these obligations is insufficient.

This briefing paper highlights some of the relevant obligations under international law, the violations ECC has identified in Ukraine, and recommendations for action. For further discussion of international legal obligations concerning treatment of the deceased and casualty recording in armed conflict, see ECC's publication 'The legal obligation to record civilian casualties of armed conflict'.¹

1. Parties to armed conflict must search for all civilians missing as a result of hostilities, occupation or detention

There have been numerous reports of people missing and unaccounted for following Russian missile strikes in various locations across Ukraine. In areas under Ukrainian control, including those where Russian forces have withdrawn, the Ukrainian authorities must undertake a comprehensive search for the missing and deceased. Such searches have now been initiated under the authority of the Ukrainian police; the international community should offer any assistance required.

In areas under Russian control, notably in the south and east of Ukraine, access by Ukrainian authorities is impossible. Under international law, Russia is responsible for searching for missing persons in the areas it occupies or controls, but there is no indication that this obligation is being upheld. Where parties to armed conflict are unwilling or unable to uphold these obligations, humanitarians and civil

¹ Breau, S and Joyce, R. (2011) [Discussion Paper: The legal obligation to record civilian casualties of armed conflict](#).

society may take on these responsibilities. In Ukraine, private individuals have taken on the task of search for the missing. A private group, 'Search for the Missing', was formed by the Ukrainian TV presenter Katya Osadcha to assist relatives in their search.² The ICRC has been instrumental in establishing humanitarian corridors but their primary aim at present is to evacuate the living, not search for the missing.³

2. Parties to armed conflict must collect all casualties from the area of hostilities as soon as circumstances permit, and ensure bodies are not despoiled or mutilated

Parties to armed conflict are required to collect the wounded and deceased from the area of hostilities as soon as circumstances permit, and the opposing party is obliged to cooperate in facilitating this task. Media reports of bodies abandoned on the side of roads and in destroyed buildings indicate that this obligation is not being fulfilled in Ukraine. In locations which remain under active missile attack, retrieval is impossible without further endangering life. However, in locations where hostilities have ceased - temporarily or permanently - it is the responsibility of the state in control of that territory to arrange for retrieval.

There are reports that the Ukrainian police are systematically searching for casualties in bombed sites in the areas around Kiev that Russia has abandoned.⁴ There is no publicly available evidence at present of Russian authorities conducting similar operations in those areas they still control.

3. Parties to armed conflict must take all reasonable steps to identify the deceased and to determine the cause of death

Parties to armed conflict must take all reasonable steps to identify the deceased and to determine the cause of death. Wherever possible, bodies must be identified before burial. Particular efforts must be made to identify, or record potentially identifying information, prior to cremation. Reports that Russian forces have attempted to burn bodies to conceal the cause of death and / or identity of the deceased are, if true, particularly egregious violations of their responsibilities under international law.⁵

Reports have emerged that Ukrainian authorities are using facial recognition to identify dead Russian soldiers so that their relatives can be informed.⁶ This is evidence of best practice that should be adopted for civilian casualties as well. At the request of the Ukrainian authorities, the International Commission

² Clahane, P. (2022), '[Ukraine War: The Women Tracing Missing Relatives](#)', *BBC News*, 16 March. (Accessed: 28 March 2022)

³ ICRC (2022), '[What you need to know about our action in Ukraine](#)'. (Accessed: 28 April 2022)

⁴ Sky News (2022), '[Ukraine War: Police collective dead bodies near Kyiv say they have picked up more than 130](#)'. (Accessed: 18 April 2022)

⁵ Al Jazeera (2022), '[Burning Bodies: Ukraine accuses Russia of covering up atrocities](#)'. (Accessed: 16 April 2022)

⁶ Brewster, T. (2022), '[Ukraine starts using face recognition technology to identify dead Russians and tell their relatives](#)', *Forbes*, 23 March. (Accessed: 16 April 2022)

on Missing Persons are sending a team of forensic experts to forensically identify remains and determine the cause of death.⁷ This task is particularly important in cases where war crimes have been alleged, including the apparent mass execution of civilians in Bucha⁸ and Borodyanka.⁹ Where there are allegations of war crimes the whole area should be treated as a crime scene, with appropriate forensic examination conducted.

International law states that civilians should never be targeted in armed conflict, and execution of civilians is an international crime. There should be a presumption that any civilian death occurring in armed conflict is potentially unlawful and the relevant controlling power should take steps to record and investigate the details. Where they are unable or unwilling to do so, the international community should take steps to fulfil this role.

4. Parties to armed conflict must respect the right of families to know the fate of their loved ones

One of the notable features of the conflict in Ukraine is how many people have fled the country or become internally displaced in a short space of time. It is a chaotic situation where the relatives of missing persons are often indeed missing themselves, as their current locations are difficult to determine. Nevertheless, parties to the conflict have an obligation to locate and inform the relatives of the dead as soon as possible. The facial recognition technology used by the Ukrainian authorities to identify deceased Russian soldiers should be used to identify civilian victims and notify surviving family members.

Identifying the missing and deceased, and notifying their surviving relatives, is the legal responsibility of the parties to the armed conflict. However, the international community can assist with this by systematically recording details of Ukrainian nationals who have fled the country in a shared international database. This should be done in coordination with the International Committee of the Red Cross' Central Tracing Agency, which already has the infrastructure in place to assist all nations in recording missing persons and tracing the relatives of the deceased.

Other international agencies with experience in family reunification, such as the International Organisation for Migration, and local civil society organisations should be invited to collaborate in these efforts. This should include the new, locally-led initiatives emerging in Ukraine to support victim identification and notification efforts. For example, in Bucha, the local member of parliament is working

⁷ Corder, M. (2022), '[Experts set to travel to Ukraine to identify the war's dead](#)', *ABCNews*, 8 April. (Accessed: 16 April 2022)

⁸ Ibid.

⁹ Bolton, T. (2022), '[Kyiv fears a civilian massacre at Borodyanka worse than Bucha](#)', *Euronews*, 5 April. (Accessed : 16 April 2022)

with volunteers to create a digital system to identify people buried in mass graves and trace missing relatives.¹⁰

5. Parties to armed conflict must ensure that the dead are buried individually, with dignity and in accordance with their religious or cultural beliefs

International law recognises that there may be times when urgent burial is required of large numbers of people, and this may necessitate the use of mass graves. However, this should be avoided wherever possible and each person should be buried in an individually identifiable grave. An important source for discussion of these issues is the report on mass graves by the UN Special Rapporteur on extrajudicial, summary or arbitrary executions. She highlights that the creation of mass graves violates various human rights including the right to life, rights linked to enforced disappearances, and 'last rights' - the dignified treatment of the dead.¹¹ It has also been argued that mass grave sites must be treated as crime scenes in and of themselves.¹² Recent reporting indicates that these mass grave sites under Ukrainian control are being treated as such and the investigation is being led by the Ukrainian Prosecutor General assisted by a network of NGOs trained in forensics and criminal investigations.¹³ Officials of the International Criminal Court have been asked to visit the mass grave sites in Bucha as part of its investigation.¹⁴

Early in the conflict images emerged of Ukrainian authorities burying civilian casualties in mass graves, reportedly due to the intensity of Russian bombardment.¹⁵ It has also been reported that Russian forces buried civilians in mass graves, possibly to conceal evidence of war crimes. Whatever the reason for their use, it is vitally important that the location of these graves be recorded and the sites protected until they can be properly examined. As soon as hostilities cease and appropriate forensic and legal expertise is available, the bodies should be exhumed, identified, and reburied individually if possible. Relatives of the deceased must be notified, and their wishes respected concerning reburial in accordance with religious and culturally appropriate traditions.

¹⁰ Clahane, P. (2022), '[Ukraine War: The Women Tracing Missing Relatives](#)', *BBC News*, 16 March. (Accessed: 28 March 2022)

¹¹ United Nations, General Assembly, [Report of the Special Rapporteur of the Human Rights Council on extrajudicial, summary or arbitrary executions - Mass graves, highlighting the multitude of sites of mass killings and unlawful deaths across history and the world](#), A/75/384 (12 October 2020). (Accessed: 28 March 2022)

¹² Knuckey, S and Parrin, A. (2022), '[Mass graves in Ukraine should be treated as crimes scenes – and urgently secured](#)', *Just Security*, 6 April. (Accessed: 28 April 2022)

¹³ Lowen, M. (2022), '[Kyiv's Battle for Justice over alleged war crimes](#)', *BBC News*, 14 April. (Accessed: 28 April 2022)

¹⁴ Timsit, A and Hassan, J. (2022) *The Washington Post*, 3 April 2022. '[Signs of Massacre in Bucha spark calls for war crimes probe](#)', *Washington Post*, 3 April. (Accessed: 28 April 2022) and International Criminal Court, [Statement of ICC Prosecutor, Karim A.A. Khan QC, on the Situation in Ukraine](#), 28 February 2022. (Accessed: 28 April 2022)

¹⁵ Peter, L. (2022), '[Mass graves in Ukraine: Battered cities are digging makeshift burial sites](#)', *BBC News*, 14 March. (Accessed: 28 April 2022)

6. Parties to armed conflict must record the location of places of burial, and ensure graves are maintained and protected

The extensive coverage of the conflict in Ukraine, including through both traditional and new media, has resulted in rapid reporting of the locations of mass graves.¹⁶ There are also reports of civilians burying friends and relatives in back yards or other informal or unmarked locations.

International law creates an obligation on parties to conflict to ensure the systematic recording of the location of **all** grave sites. This is an essential component of the obligation to ensure that the deceased are treated with dignity after death and that their families are able to know the fate and whereabouts of their relatives.

Thus far, there is no evidence of a systematic effort in this regard by authorities in Ukraine. However, once hostilities cease the government must take urgent steps to identify and record the location of all graves of victims of the armed conflict. The international community should provide assistance with this task.

¹⁶ Ibid.