

AMNESTY INTERNATIONAL PUBLIC STATEMENT

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HIGH LEVEL SECRETARY GENERAL MISSION TO UKRAINE: END OF MISSION STATEMENT

INTRODUCTION

An Amnesty International delegation, led by Secretary General Agnès Callamard, conducted an official country visit to Ukraine from 30 April to 6 May 2022. The objectives of the visit were fourfold:

- Release Amnesty's latest findings on war crimes and other international humanitarian law (IHL) violations, including extrajudicial executions committed in Bucha and air strikes targeting civilian infrastructure in Borodyanka;
- Contribute to ongoing reflections about and initiatives for international justice for Ukraine and present Amnesty's recommendations on accountability for war crimes and the crime of aggression;
- Demonstrate global solidarity with the people of Ukraine, human rights defenders, Amnesty colleagues from Ukraine, including those who have remained in Ukraine;
- Emphasize the importance of global solidarity: The events in Ukraine raise grave issues which are not confined to Europe but are global in impact. That demands global leadership and global solidarity, inclusive of the Global South. With that in mind, we also sought to respond to accusations of the West's double standards in response to the Ukraine crisis.

The Secretary General warmly thanks the Ukrainian authorities for their availability and support during the visit, including senior officials from the Office of the President, Ministry of Foreign Affairs, Ministry of Justice, Ministry of Interior, Ministry for Reintegration of the Temporarily Occupied Territories, Ministry of Healthcare, as well as the Ombudsperson of Ukraine and the Commissioner for Gender Equality Policy.

She and her delegation are particularly grateful to the survivors of human rights violations and war crimes whom they met in Bucha and Borodyanka and members of Ukrainian civil society organizations.

The delegation also held a meeting with AI Ukraine colleagues in the office of AI Ukraine, a very emotional moment for all those present.

The Secretary General presents the visit's findings and wishes to draw attention to a number of issues with which she engaged during her visit in the country.

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CONTEXT OF THE MISSION

On 22 February 2022, the Russian Duma (Parliament) resolved to recognize the Russia-backed self-styled “Donetsk People’s Republic” and “Luhansk People’s Republic” (“LDNR”) in Donbas, eastern Ukraine, as independent states. The Duma also authorized the deployment of Russian military forces outside of Russia to Ukraine, describing it as a “peacekeeping operation”.

It was the second time that Russia moved to openly occupy sovereign Ukraine further to the 2014 occupation and illegal annexation of Crimea, and further to its officially denied military presence in eastern Ukraine since then. These actions undermine the sovereignty and territorial integrity of Ukraine by contravening international law and agreements, including the 2014-2015 Minsk Accords which recognize Donbas as part of Ukraine. The move also nullified a ceasefire agreed under the Minsk Accords and blocks any envisaged peaceful outcome of the eight-year armed conflict between Ukrainian forces and the Russia-backed separatists. The Minsk Accords, which were signed by the representatives of the Organization for Security and Cooperation in Europe (OSCE), Russia, Ukraine, and “LDNR”, were also endorsed by a UN Security Council Resolution, and called for a significant degree of autonomy for the two regions inside Ukraine.

On 24 February 2022 Russia launched a full-scale invasion into Ukraine, crossing its borders and bombing military targets near and in large cities, some of its forces reaching the immediate outskirts of Kyiv the same morning. Over the last two months, Russia’s invasion of Ukraine has triggered the largest refugee crisis in Europe since the end of World War Two and has resulted in countless violations of international humanitarian and human rights law.

Thus far over 4 million people have left Ukraine, and more are doing so all the time. 3.8 million are officially registered as internally displaced, although the actual number is probably far higher. Hence the International Organization for Migration (IOM) estimates that 7 million Ukrainians have been internally displaced since 2014.

Amnesty International, and many others, have documented scores of war crimes and other violations of IHL, primarily by Russian forces, which include:

- Disproportionate and indiscriminate attacks resulting in deaths and injuries of civilians,
- Extrajudicial killings, acts of torture, in areas that had been occupied by Russian military forces prior to their retreat,
- Siege warfare tactics, characterized by relentless indiscriminate attacks on densely populated areas, most notably in Mariupol,
- The use of cluster munitions which is banned under international law,
- Disruption of basic utilities and cuts to communication,
- Destruction of civilian infrastructure,

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- Concerns over restrictions to access to medicine and healthcare,
- Abuses against prisoners of war (including by Ukrainian forces).

Efforts to create well-planned, safe humanitarian corridors to allow civilians to escape have faced major challenges. Many Ukrainian civilians have been unable to leave besieged areas, fearing Russian attacks – and some have been shot and killed while trying to flee to safety.

There are major ongoing concerns in the Eastern part of Ukraine which is currently experiencing the brunt of the conflict, and numerous allegations of forcible transfers and deportations of populations from occupied territory.

INTERNATIONAL LAW CONTEXT

Russia's invasion of Ukraine violates international law, including Article 2(4) of the UN Charter, which prohibits the use of force in international relations, and international human rights law and international humanitarian law. As indicated above, the aggression has further led to severe violations of humanitarian law and human rights law. Amnesty has determined that many of these amount to war crimes.

Russia's attacks on Ukraine constitute the crime of aggression, defined by UN General Assembly Resolution 3314 as “[t]he invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof”.

The Rome Statute includes aggression as a crime under international law, meaning that “*the planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations*” can be prosecuted by the Court.

OVERVIEW OF KEY FINDINGS

A COUNTRY AT WAR ENGAGED IN ACTIVE LARGE SCALE MILITARY OPERATIONS

Ukraine is a country at war, with military priorities taking precedence over others. This also means that the military and security establishment and the Ministry of Defense have a far bigger influence over a range of issues than they would in peacetime, including over such matters as the remit of the law on cooperation with the ICC, the ratification of the Rome Statute, the exchange of prisoners where Russian prisoners may also be alleged war criminals or witnesses to war crimes, etc.

The military efforts reportedly amount to 5 billion USD/month; however, rebuilding will cost hundreds of billions more.

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WAR CRIMES AND OTHER VIOLATIONS

By the time the delegation departed, the judicial authorities of Ukraine registered and opened criminal proceedings in more than 9,602 cases of suspected violations of international humanitarian law, including war crimes. That number reportedly increases with each passing day and does not include those violations taking place in areas of active hostilities and inaccessible to the Ukrainian authorities, such as in Mariupol or Severodonetsk. The authorities also created an online platform for members of public to report war-related crimes, and at the time of the visit over 30,000 entries were filed on it.

The delegation undertook visits to Bucha and Borodyanka, where the pattern of crimes committed by Russian forces during their occupation included both unlawful attacks and wilful killings of civilians. The delegation met families whose loved ones were killed in horrific attacks, and whose lives have changed forever because of the Russian invasion. One person had lost five family members; a mother had lost three members of her family. In Bucha, the delegation met with first-hand witnesses and family members of victims of extrajudicial killings, including of five killed in separate incidents in a single residential compound.

Survivors, including victims' family members, conveyed their demands for justice. Concerns were expressed to the delegation regarding the collection and processing of human remains, the improper identification of remains, the fact that DNA was not always collected, and the overall lack of information available to them.

Officials recognised that policing, investigative and forensic capacities are stretched to their limits given the scale of the crimes and their nature; acknowledging that peacetime capacities are just not sufficient. In addition, tensions between competing priorities were highlighted. Local authorities may wish to clear away rubble as soon as possible, but judicial actors need to preserve evidence. There may be insufficient capacity to do the work needed to gather all the evidence quickly enough, with the emergency teams and demining processes taking first and primary responsibility at a crime scene.

SEXUAL VIOLENCE

There are allegations that sexual violence within areas controlled by Russian forces is rampant and widespread, with the circumstances conducive to conflict-related sexual violence. The delegation was informed, however, that only a few survivors had come forward, and even fewer were prepared to be publicly identified for the purpose of prosecution. 10 to 15 cases had been reported by the Ombudsperson as those who requested psychological help via the designated hotline and (presumably unlike most) were prepared to have their details publicly disclosed, while NGOs have documented a total of 16 cases. The national police registered and opened criminal proceedings in 10 cases (where the number of survivors may be higher than 10) and handed these over to the Security Service of Ukraine (SBU). The delegation was also informed that the SBU is in charge of the investigations of sexual violence (due to it

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having the jurisdiction over all war crimes) rather than the police and may have cases registered of which we are not aware.

A range of actors commented that survivors were unwilling to report the crimes and speak, for various reasons, ranging from stigma attached to the crime of sexual violence to lack of trust in the authorities. Witnesses may have reported allegations but survivors themselves had not yet come forward. The police have created a taskforce intended to win the survivors' trust and convince more to come forward.

Many with whom the delegation met emphasised that priority should be given to creating safe conditions for reporting and strengthening local capacity and know-how in regard to the interviewing of survivors and witnesses.

HUMANITARIAN CORRIDORS

The delegation was told that at the time of its visit, 394 humanitarian corridors had been suggested by the Ukrainian side but that agreement with the Russians could only be reached for 321. However, only 155 were actually implemented. The main problems preventing their operationalization included security issues, confiscation of vehicles, capture of drivers, etc. by the Russian forces. The delegation was not in a position to confirm these numbers and findings.

The ICRC has facilitated the safe passage of civilians out of besieged areas via temporary humanitarian corridors, notably from Sumy and Mariupol. Since March, the ICRC has helped facilitate the evacuation of more than 10,000 civilians from those locations to other parts of Ukraine.

Nonetheless, given the relative paucity of safe humanitarian corridors, many Ukrainians have had to organize evacuations from conflict-affected areas themselves, without official assistance. Some of these informal convoys have been fired upon by Russian forces, resulting in civilian deaths.

TREATMENT OF HUMAN REMAINS

The delegation was informed of the Russian side's reluctance to collect the remains of the killed members of its forces in numerous instances, ignoring respective requests from the Ukrainian side. We are not in a position to confirm or deny, but this issue is widely reported, alongside the speculations that the Russians are thus trying to keep their acknowledged losses down.

DAMAGES AND LOSS OF PROPERTY

A system has been established to allow people to register online their claims for compensation for loss of properties or businesses. Concerns were raised regarding plans for reconstruction and the importance of community involvement in decision-making regarding the future of what remains of their homes. Survivors are keen to see their buildings/homes reconstructed where and as they were and are worried that local authorities may have other plans.

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All those whom the delegation met, whose housing had been destroyed or seriously damaged, have had to find substitute accommodation with relatives or friends. One official recognised that, at the moment, people had little choice but to engage in self-support with everyone facing a long wait for access to compensation and/or new housing. It was further recognized that there are more difficult times ahead, including after the war, because people's "savings and reserve funds are depleted."

INVESTIGATION AND PROSECUTION

The delegation recognises the context makes the delivery of justice complex and challenging. We found a great openness to ways of looking for solutions, to advice and suggestions – including lessons from other crises.

The delegation was informed that cases for prosecution are prioritized by Ukraine officials on the basis of whether:

- they relate to the crime of aggression;
- they are war crimes committed on areas accessible to the investigators and prosecutors;
- suspects have been identified.

The delegation was informed that thus far 10 alleged perpetrators had been identified, and that the Prosecutor's Office was taking two cases to court to be tried *in absentia*, including the case of one Russian soldier alleged to have killed four civilians, including one that he subjected to torture.

We were told repeatedly that investigations will follow "*Rome Statute standards*." In addition, there are international teams of experts on the ground to support investigations and forensic examination including from France, Slovenia, Lithuania, although the extent of their role within the complex investigation/prosecution loop remains to be further clarified or strengthened.

There are already a number of national institutions involved in investigation, securing evidence and prosecution, including, as far as the delegation could ascertain: Ministry of Interior (Police investigation), SBU, Ministry of Health (Forensic), Ministry of Justice, Prosecutor's Office, Local Authorities (removal of bodies to mortuaries and burials). The delegation learned that there were challenges around collection of huge amounts of evidence compounded by the poor crime scene administration. There was also no infrastructure for international forensic experts to carry out their work effectively.

NATIONAL LEGAL FRAMEWORK

A number of people we met during the visit acknowledged that the Ukrainian legal framework may not be fit for the purpose of investigating and prosecuting war crimes and crimes under international law, including violations of international humanitarian law.

Some of the problems include:

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- Currently Ukraine's Criminal Code does not contain some of the relevant crimes (war crimes and crimes against humanity). A bill (№ 2689) was fully approved by the Parliament in May 2021 that would address this (including by introducing the crimes of aggression, genocide, crimes against humanity and war crimes to the Criminal Code and amending the Penal Code) but was never signed into law by the President. We were informed that this was likely due to objections by the military, similar to the military's objection to ratification of the Rome Statute, and it will not be signed.
- To address this legal gap, Ukraine's government proposed draft Law № 7290, which would make the necessary provisions in the Criminal and Penal Codes, but would narrow the scope in relation to command responsibility¹: the bill does not envisage criminal responsibility for the commanding officer's/other persons' who are effectively in control, inaction to prevent crimes under international law, nor for their inaction when they did not know but should have known of such crimes by their subordinates based on information available to them. Civil society organisations in Ukraine have urged the authorities to urgently address this gap and to ratify the Rome Statute (both of which we are told require further negotiation with the Ukrainian military establishment).

On Tuesday, May 3, a period during the mission, Ukraine's Parliament adopted Law № 7304 on Cooperation with the International Criminal Court (ICC). The draft law had been introduced on April 20 by the Cabinet of Ministers of Ukraine "On Amendments to the Criminal Procedure Code of Ukraine on Cooperation with the International Criminal Court". It aimed at implementing Part 9 of the Rome Statute to regulate the cooperation of Ukrainian authorities with the International Criminal Court, and in particular give it access to criminal proceedings in Ukraine.

The law that was adopted, however, makes no reference to the ratification of the Rome Statute and appears to apply exclusively to the prosecution of armed aggression by the Russian Federation or another country against Ukraine. This would be entirely contrary to the principle of impartiality and against the ICC's jurisdiction over all persons on Ukraine's territory.

INTERNATIONAL COOPERATION: PROSECUTION AND TRIALS

In the aftermath of Russia invasion, a plethora of diplomatic initiatives have been undertaken, including:

- UN General Assembly Resolutions condemning the aggression among other things, on humanitarian corridors and suspension of Russia from the UN Human Rights Council (HRC);
- HRC Resolutions establishing a commission of inquiry (CoI);
- HRC Special Sessions;
- UN Security Council special sessions;
- UN Special Procedure statements condemning the invasion, war crimes and human rights violations in both

¹ Center for Civil Liberties, *Euromaidan SOS: a new government bill №7290 artificially reduces opportunities to prosecute Russian military commanders and civilian superiors liable for war crimes*, 20 April 2022 <https://ccl.org.ua/en/claims/euromaidan-sos-a-new-government-bill-%E2%84%96-7290-artificially-reduces-opportunities-to-prosecute-russian-military-commanders-and-civilian-superiors-liable-for-war-crimes/>

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Ukraine and Russia, and calls for a Special Rapporteur on Russia;

- Treaty Monitoring Bodies statements on racial discrimination against those fleeing the war;
- Council of Europe resolutions condemning the aggression and suspension of Russia;
- Organisation for Security and Cooperation in Europe (OSCE) Moscow Mechanism investigation into war crimes and crimes against humanity.

At the time of the delegation's visit, the following mechanisms were available for prosecution and trials, and some were already working on one or more cases. They include National investigations and national courts, International Criminal Court (ICC), International Court of Justice (ICJ), Courts in foreign jurisdictions and other international mechanisms.

Ukraine's Parliament adopted Law № 7304 regarding cooperation with the ICC (see above). The delegation inquired about the division of labour between the domestic instruments and the ICC but this is still under development and negotiation. What is established is that the ICC will not address the crime of aggression, as the Rome Statute bars it from exercising jurisdiction over the crime of aggression by non-state parties such as Russia.

16 countries have currently opened their own investigations into crimes committed on the Ukrainian territory, some of them based on the principle of universal jurisdiction.

OTHER MECHANISMS

Through Resolution 49/1, adopted on 4 March 2022, the HRC decided to urgently establish an independent international Commission of Inquiry on Ukraine, comprising three human rights experts. The Col has been given a strong mandate which includes, investigation into all alleged violations and abuses of human rights and violations of international humanitarian law, and related crimes in the context of the aggression against Ukraine by the Russian Federation, and to establish the facts, circumstances and root causes of any such violations and abuses. The Col also has the mandate to consolidate and analyse evidence of such violations and abuses in view of any future legal proceedings. The Col will make recommendations, in particular on accountability measures, all with a view to ending impunity and ensuring accountability, including, as appropriate, individual criminal responsibility, and access to justice for victims. First oral update to HRC expected in September 2022, with a written report to HRC in March 2023, and a report to UN General Assembly at its 77th session.

The Amnesty delegation exchanged with high-level officials of Ukraine on the possible future shape and mandates of international or hybrid tribunals, including for war crimes and the crime of aggression. Russia's war against Ukraine has generated several proposals and options, which need to be examined carefully, including those related to the accountability implications for the crime of aggression.

Officials met by the delegation suggested that a so-called Nuremberg Two tribunal was under consideration. A 'special tribunal for the punishment of the crime of aggression against Ukraine' based on the Nuremberg model is intended to remedy the current situation of the ICC being unable to exercise its jurisdiction with regard to the crime of aggression against Ukraine. It will be set up through a treaty between Ukraine and other partner countries ("allies")

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in the words of Prosecutor General who named Poland, Lithuania and the UK, in particular, as those with which the relevant consultations are already ongoing) and will be opened to further ratification.

Amnesty raised concerns with this approach, including that it likely will be established initially by the Council of Europe or a small group of European States and thus likely to generate accusations of double standards, selectivity and one-sidedness. By focusing exclusively on aggression, it is also inherently selective.

Cooperation and coordination among different justice actors working on Ukraine are crucial to achieve a measure of comprehensive accountability for victims, and to ensure effective investigations and prosecutions at the ICC, as well as at the national level. Given the prevalence of bodies working to collect and preserve evidence in Ukraine – and the significant danger of overlap - it is imperative that all actors undertaking this function cooperate and coordinate with each other as much as possible.

REPARATIONS AND SANCTIONS

The Government is confronting a huge financial burden, in relation to the costs of its war efforts, the ongoing impact on national economy, and the future costs of reconstruction, compensation and reparation. According to the Minister of Justice, the government was spending more than 5 billion USD a day to cover for expenses related to the ongoing war. The country will need 100s of billions of dollars to rebuild.

In theory, Russia should cover the cost of the reparations for crimes for which they are responsible. A range of sanctions have been imposed against Russia by countries around the world. However, access to Russian assets will be difficult due to international and national laws. Assets of the Federal Russian State reserve fund and pension fund, worth billions, are being held in frozen bank accounts around the world but benefit from sovereign immunity protection. (There is an exception to this principle, arising from the crime of aggression and which needs to be triggered through an international treaty or possibly another mechanism such as a UN Commission.) The assets of Russian oligarchs benefit from various substantive and procedural protections on property rights, and at any rate, for the confiscation of their assets to be justified, there would need to be some showing that the oligarchs' wealth was linked to the war effort.

Several officials confirmed that while laws are being passed on compensation for those who lost their homes, there are no funds in the national budget for such compensation or rebuilding.

INTERNATIONAL RELATIONS AND COALITION

The delegation was comprised of experts from around the world to highlight the international and universal implications of Russia's war against Ukraine, and to underscore the necessity of establishing a global coalition in response, beyond Western countries alone.

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The delegation raised this in many of the official meetings and everywhere were met with deep appreciation for this approach. The delegation's assessment was shared by many officials who recognized that more needed to be done by Ukraine, particularly in the Global South, to ensure both governments and people more broadly had the necessary information and evidence regarding the conflict and understood the implications of Russia's aggression for the world.

As many have pointed out, a large swath of the globe has been notably reticent regarding the Russian invasion, with the world's two most populous countries, China and India, failing to condemn it, emphasizing instead the "legitimate security interests" of both sides. The Global South has largely abstained from imposing sanctions against Russia, with even NATO member Turkey refusing to participate in the Western-led effort.

RECOMMENDATIONS

Throughout our time here in Ukraine, the Amnesty delegation has highlighted that **Russia's aggression against Ukraine matters to us all**. It has unleashed an international crisis that deserves global solidarity for the people directly affected but which demands solutions that require global thinking and universal commitment.

Amnesty International will continue to push forward this message wherever leaders seek to disinform or distort; whenever they claim that bullying, aggression, militarization are preferable to the international rule of law.

We recommend that Ukraine's officials engage further with countries and governments outside the Western bloc – The African Union, the governments and parliaments of African countries, Asian, as well as Latin American – to enlarge the coalition of support, to enlist the contribution of many others, in combatting what is also a war of values.

The Amnesty International delegation urges meaningful and effective adherence to the principle that all who directly commit war crimes should be held criminally responsible for them. Under the doctrine of command responsibility, hierarchical superiors – including commanders and civilian leaders, such as ministers and heads of state – who knew or had reason to know about war crimes committed by their forces but did not attempt to stop them or punish those responsible, should also be held criminally responsible.

In practice, that principle may not be met immediately nor to the extent demanded. We know international justice is rarely swift. So we urge the authorities and those supporting them to manage public expectations fairly, transparently and truthfully.

That does not mean that victims' rights should be ignored or passed over. Victims have a right to be heard, to be recognized, to be protected, to be informed, to have procedural matters explained to them. They have a right to the truth. They have the right to participate in mechanisms and processes related to future of the sites where violations took place, including, for instance, the buildings in Borodyanka. The people themselves must be at the heart of any memorialization processes, be they symbolic, narrative or ceremonial. Their property rights must be fully respected. Ultimately, victims must be able to see ahead the journey to when and where they will fully realise their rights to truth, justice, and reparation.

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In the longer-term, it may be necessary to establish a form of hybrid or internationalized mechanism for accountability in Ukraine, given domestic and the ICC's limited resources and capacity, the limitation regarding the crime of aggression. We urged not to rush setting up such mechanism or tribunal but to insist on its international legitimacy. For that too will be essential to a long-term victory.

Ukraine authorities should:

- Ensure effective, independent, and impartial investigations into crimes committed by all parties to the conflict;
- Ensure that legislation is adopted which ensures full cooperation with the ICC and other international justice processes;
- Consider the adoption and further amendment of domestic legislation which harmonizes domestic law with international criminal law, and which is fully in line with international law standards. In this regard, Draft Law № 7290 and the gap it leaves in the legislation on command responsibility and aggression as a “leadership crime”, and the ongoing reluctance to ratify the Rome Statute, are problematic;
- Urgently address legislative, structural, capacity, and other shortcomings to be able to undertake domestic investigations and prosecutions to required international law standards;
- Urgently ratify the Rome Statute;
- Urgently ratify the Istanbul Convention.