A DECADES-LONG PROBLEM

Why is it difficult to search for missing persons in the context of the war in Ukraine?

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INTRODUCTION

Since 2014, an international armed conflict started by the Russian Federation (the "RF") has been ongoing in Ukraine, resulting in thousands of Ukrainian citizens going missing. The exact number of people who went missing during the war is unknown, but as of 2020, the ICRC has received 1,835 applications for family tracing in connection with the armed conflict in Ukraine. Since the beginning of the full-scale invasion of Russia on February 24, 2022, the number of missing persons has been steadily increasing. As of April 12, 2024, the register of missing persons under special circumstances, which operates under the Ministry of Internal Affairs of Ukraine, has more than **36 thousand records** of people who went missing during the war[2].

Tens of thousands of families know nothing about the fate of their loved ones. They are neither among the living nor among the dead. Relatives of missing persons risk living in this complete uncertainty for the rest of their lives.

Searching for and identifying missing persons is one of the most difficult and, simultaneously, the most necessary procedures in a time of war. The case of Ukraine is unique, as this process takes place during an armed conflict, not after it ends. This is since the war lasts for a long time, it is difficult to predict when it will end, and the chances of successful search and identification of missing persons decrease significantly with time.

This policy brief defines the concept of "missing persons" (1), describes how the rights of this category of persons and their relatives are regulated (2), identifies the problems of accounting and searching for missing persons in special circumstances (3), and offers recommendations for improving the situation with the protection of the rights of missing persons and their relatives (4).

1. DEFINITION OF "PERSONS MISSING UNDER SPECIAL CIRCUMSTANCES"

The definition, legal status, and bodies involved in the identification, registration, and search for persons missing in war are regulated by the Law of Ukraine adopted in 2018[3]. A person is considered missing if they disappear under special circumstances, such as armed conflict, hostilities, temporary occupation of a part of the territory of Ukraine, natural or artificial emergencies[4]. A person is considered to have gone missing under special circumstances from the moment the applicant submits a statement on the fact of their disappearance[5]. Such a person acquires legal status from the moment information about him or her is entered into the Unified Register of Persons Missing in Special Circumstances. The register includes civilian adults, children, and military personnel.

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1. Ukrainian Red Cross Society website, International Day of the Disappeared, 30.08.2020
https://redcross.org.ua/news/2020/08/14211
2. There are more than 36 thousand entries in the register of missing persons under special circumstances, most of the missing will be found after our Victory - Commissioner, 12.04.2024, Interfax-Україна. https://interfax.com.ua/news/general/979888.html
3. Law of Ukraine "On the Legal Status of Persons Missing in Special Circumstances" of 12.07.2018 No. 2505-VIII
https://zakon.rada.gov.ua/laws/show/2505-19#Text
4. Ibid
5. Ibid

A certain number of people reported missing are likely to have died, been killed, or improperly buried. Among them are military personnel killed during hostilities.

However, there are also Ukrainian combatants who have been captured by the RF. In addition, it is known that representatives of the Russian Federation use the practice of enforced disappearances, unreasonably detain civilians in the occupied territories of Ukraine, and often hold them incommunicado. In addition, Ukrainian citizens deported or forcibly displaced by the Russian Federation may be considered missing under special circumstances.

The Unified Register of Persons Missing under Special Circumstances (hereinafter – the "Register") is an electronic database designed to store, protect, process, use, and disseminate certain information about persons missing under special circumstances, their unidentified remains, the presence or absence of a court decision on the recognition of persons missing, missing or declared dead, as well as other data used to ensure the registration of missing persons for the purpose of their search.

2. **REGULATION**

The Commissioner for Persons Missing in Special Circumstances implements state policy in compliance with international humanitarian law throughout Ukraine and is authorized to coordinate the search for persons missing in special circumstances and resolve other related issues.

In addition, the Law authorizes other bodies to register and search for persons missing under special circumstances. These include ministries, state services, the National Guard and police, the Security Service of Ukraine, prosecutors, and local executive authorities.

Specifically, they deal with the search and registration of missing persons:

■ Ukraine's Ministry of Internal Affairs is responsible for accounting and searching for missing persons[6].

■ The Main Intelligence Directorate of the Ministry of Defense of Ukraine, namely the Coordination Headquarters for the Treatment of Prisoners of War, is responsible for the return of prisoners and bodies of the dead.

■ The Ministry of Defense ensures the activities of search groups.

■ The Joint Center for the Coordination of the Search and Release of Prisoners of War, Illegally Deprived of Liberty as a Result of Aggression against Ukraine - the Security Service of Ukraine is responsible for the release of captured Ukrainian defenders, civilians illegally deprived of liberty as a result of aggression against Ukraine, the return of illegally deported children and adults held by the aggressor state (its occupation forces or occupation administrations), and the repatriation of the bodies of persons killed in connection with the armed aggression against Ukraine[7].

6. Official web portal of the National Police of Ukraine, Ihor Klymenko on communication with families of missing persons: there were a lot of complaints, now there are almost none, 5.01.2024
https://www.npu.gov.ua/news/ihor-klymenko-pro-komunikatsiiu-iz-rodynamy-znyklykh-bezvisty-bulo-duzhe-bahato-skarh-zaraz-ikh-maizhe-nemaie
7. Official web portal of the Security Service of Ukraine, Joint Center for Coordination of Search and Release of Prisoners of War and Illegally Deprived of Liberty as a Result of Aggression against Ukraine
https://ssu.gov.ua/obiednanyi-tsentr-z-koordynatsii-poshuku-ta-zvilnennia-viiskovopolonenykh-nezakonno-pozbavlenykh-voli-osib-vnaslidok-ahresii-proty-ukrainy

If a person goes missing, relatives must follow a certain algorithm of actions to enter information into the Register[8]. However, the problems they face when searching are different and often practical and are described below.

3. PROBLEMS RELATED TO THE REGISTRATION AND SEARCH FOR MISSING PERSONS

Time does not always help. The experience of other conflicts shows how difficult and time-consuming the search for missing persons is. Even those countries where conflicts ended long ago still have difficulties finding or identifying the missing. Mass graves are still being found in these countries. For example, 29 years after the genocide in the city of Srebrenica (Bosnia and Herzegovina), there are more than 7,000 graves of men and boys in the burial site of Bosnian Muslims. The bodies of more than a thousand victims have not yet been found or identified[9].

Syria is believed to have the largest number of people missing, and they are mostly victims of government agents, militias, and armed groups. According to one UN[10] estimate, 100,000 people are still missing after anti-government protests erupted in Syria in 2011 and a civil war that has lasted more than a decade erupted. For example, in Sri Lanka, there are currently 60,000 to 100,000 missing persons from one of the longest conflicts in Asia (1983-2009)[11].

According to the experience of other countries, the search for missing persons in war takes place after the hot phase of the armed conflict is over. Ukraine started doing this during the war and building an appropriate system for searching for these people.

In Ukraine, as a result of the armed conflict that has been going on for more than a decade and Russia's failure to comply with its obligations under international humanitarian law, the search for missing persons is extremely difficult. In addition, it should be taken into account that today, almost one-fifth of Ukraine's territory is under Russian occupation[12], and intense hostilities continue. Under these conditions, the number of missing persons is constantly increasing, and the effectiveness of the search is not improving.

The problems that arise with the search for missing persons can be divided into two main ones, which are interrelated. The first is the disappointment of the families of missing persons with the state's work. Working with families, we realize they often believe the state is not doing enough to find their loved ones. Although Ukraine began searching for missing persons before the full-scale invasion, coordination between the responsible authorities and the search for missing persons was not effectively established. To this day, there are still missing persons who went missing in 2014. Among them are both military and civilian. Since

8. Media Initiative for Human Rights, A soldier has disappeared on the battlefield. Here are 10 steps to take to start searching for a soldier, 28.03.2024. https://mipl.org.ua/vijskovyj-znyk-na-poli-boyu-os-10-krokiv-yaki-varto-zrobyty-aby-rozpochaty-poshuk-armijczya
9. Media Initiative for Human Rights, Геноцид у Сребрениці: уроки історії для УкраїниGenocide in Srebrenica: History Lessons for Ukraine, 30.04.2024. https://mipl.org.ua/en/genocide-in-srebrenica-history-lessons-for-ukraine/
10. UN Syria Commission of Inquiry: Member States must seize moment to establish mechanism for missing persons, 17.06.2022 https://www.ohchr.org/en/press-releases/2022/06/un-syria-commission-inquiry-member-states-must-seize-moment-establish
11. Global Investigative Journalism Network, Розслідування воєнних злочинів: Пошуки зниклих, 9.01.2024 https://gijn.org/ua/resurs-ua/rozsliduvanna-voennih-zlociniv-posuki-zniklih
12. DeepState map https://deepstatemap.live/#6/47.953/33.541

the beginning of Russia's full-scale invasion of Ukraine, the scale of the problems has increased, and the state has faced new difficulties caused by Russia's aggression.

The second problem is that the state, for its part, is limited in its actions due to RF's actions. The state policy and bodies authorized to keep records and work on the search for missing military and civilian Ukrainians cannot work effectively due to **Russia's complete non-compliance with its obligations under international humanitarian law,** namely the prohibition of enforced disappearances, the requirement to respect family life, the obligation to register all available information before burying the dead, and the prohibition of torture (which leads to death)[13].

Thus, we can identify several serious obstacles to the work on the search for missing persons.

1

The biggest difficulty is that **specially formed search groups are often unable to work in the gray zone or the occupied territories — the RF does not provide security guarantees to such search groups and does not allow them to enter these territories.**

Currently, search groups in Ukraine are formed by the General Staff of the Armed Forces of Ukraine in coordination with the Coordination Headquarters for the Treatment of Prisoners of War. The activities of search groups are regulated by a resolution of the Cabinet of Ministers of Ukraine[14].

Search teams work with the data from the interactive map. The maps contain informa-tion about the places where service members went missing, which is transmitted by each military unit to the relevant unit of the General Staff of the Armed Forces of Ukraine. Data on missing civilians are not included on this map. This fact complicates the search for missing civilians. At the same time, search groups take all the bodies and remains of bodies that they find during search operations.

Currently, search teams are working only in the de-occupied territories where it is relatively safe to conduct search operations. However, not all Ukraine's territories have been liberated and are accessible to search teams.

For example, members of the NGO "UNITED BY THE SEA" are looking for their husbands, military men who went missing when the boats Sloviansk and Stanislav were sunk as a result of a Russian military strike. The boat Stanislav sank near the island of Zmeinyi in the Black Sea. Due to the danger, divers have not yet explored the area to search for the missing.

For two years now, the community of the NGO "FIND AND RETURN 57/34" (FIND AND RETURN HEROES OF 57TH BRIGADE OF THE 34TH BATTALION) has been searching for the 57th Separate Infantry Brigade, which went missing in April–June 2022 during large-scale battles for the settlements of Novotoshkivske and Toshkivka in the Luhansk region. According to their families, more than 100 people are still missing. As the area is still temporarily occupied, it is impossible to conduct any search missions. However, even after the de-occupation of this territory, the families of the disappeared will face a new challenge – the identification of the bodies. For a long time now, the bodies of fallen soldiers have been in the open, and it is not known

13. Customary IHL, Rule 117. Accounting for Missing Persons, https://ihl-databases.icrc.org/en/customary-ihl/v1/rule117
14. The Resolution of the Cabinet of Ministers of Ukraine #511 of 29.04.2022. https://zakon.rada.gov.ua/laws/show/511-2022-%D0%BF#n50
15. Media Inintiative for Human Rights, 16 sailors missing: where are the service people from the sunken Sloviansk and Stanislav boats?, 9.03.2023. https://mipl.org.ua/en/16-sailors-missing-where-are-the-service-people-from-the-sunken-sloviansk-and-stanislav-boats

when Ukraine will be able to return them, which will significantly complicate, if not make impossible, the process of identification[15].

2

In addition, **the Ukrainian side often cannot determine whether a person is missing or has been captured by the RF and is being held captive (illegally detained) on the territory of the RF or the temporarily occupied territory of Ukraine. Russia mostly does not confirm the captivity of thousands of Ukrainian service members and civilians,** does not allow representatives of the International Committee of the Red Cross (ICRC) to visit them, constantly relocates them and hides them, depriving them of contact with their families and the outside world. Families often find out that a soldier is in captivity or a civilian is illegally detained by the Russian Federation from the testimonies of released soldiers, not through ICRC confirmation. There are also cases when a person is entered in the register as a missing person, and then the ICRC verifies that the person is in Russian captivity.

For example, in June 2023, Wagner PMCs withdrew from the city of Bakhmut and its environs, allegedly taking with them the Ukrainian military they had held captive. It has not yet been established how many people were held captive at that time and where they were taken.

Searching for, identifying, and locating a person is an extremely difficult process.

In every official exchange of prisoners of war, there are those Ukrainian servicemen who were registered as missing. That is, the

Russian Federation did not provide information and confirmation that they were in captivity. Thus, on January 3, 2024, out of 230 prisoners of war released during the exchange, 48 were listed as missing. There were also four official cases when those who were listed as dead in Ukrainian records were released during the exchange of prisoners of war.

3

Finally, identifying a person using DNA is complicated because Ukraine lacks the capacity, particularly due to the large number of missing persons. In this context, the experience of the International Commission on Missing Persons (ICMP) is essential, as it already cooperates with Ukrainian law enforcement agencies, the Ministry of Justice of Ukraine, and the Ministry of Health of Ukraine.

However, the process of verifying and processing DNA data and entering it into the registry is lengthy.

Relatives of the disappeared note that DNA samples are processed untimely and improperly, and the procedures for identifying bodies and body remains by law enforcement agencies and expert institutions are very lengthy. It is not uncommon for unidentified service members to be buried as unknown. After that, the DNA of living relatives is entered into the database, and further examination requires a separate exhumation of the body. This can lead to severe psychological trauma for relatives. There are also cases when families receive confirmation of the death of a relative after a DNA match but do not recognize this and challenge the results of the examination in court. Therefore, the person continues to be considered missing.

4. **RECOMMENDATIONS**

ICRC

■ Validate lists of detained Ukrainian civilians and the locations of their detention.

■ Assess compliance of detention facilities with international standards and document any violations in treating civilian detainees and POWs.

■ Persist in seeking access to the facilities where civilian detainees and POWs are held.

■ Facilitate communication between civilian detainees and POWs and their families, as well as with the outside world.

Third States

■ Utilize existing embassies in Russia to seek access to places of detention holding civilians and POWs, monitor these facilities, track the movements of detained civilians, and facilitate negotiations for their release and exchange.

■ Submit requests to the ICRC for visits to sites where Russia detains Ukrainian POWs by representatives of this organization.

■ Persist in urging Russia to respect the rights of Ukrainian POWs and civilian detainees, cease torture practices against them, and foremost, facilitate the transmission of notification cards regarding the cap

ture of its POWs to Ukraine. It is imperative to press Russia to allow prisoners of war and civilian detainees communication with the outside world, which could not only enhance the psychological well-being of the prisoners but also potentially save more lives.

■ Strengthen Ukraine's efforts to search for missing persons. In particular, through the exchange of experience in identifying the bodies of the dead, as well as conducting forensic examinations. It may also be helpful to train and share the experience of law enforcement agencies in the work of search teams.

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