

**JUSTICE FOR PEACE
IN DONBAS**

*Coalition of Human Rights
Organizations*



**«MIRNIY BEREG»
(SHORE OF PEACE)**

EXECUTED AND TORTURED IN DONBAS

**ARBITRARY AND EXTRAJUDICIAL KILLINGS, TORTURE,
ENFORCED DISAPPEARANCES, AND ARBITRARY DETENTIONS**

**HDIM
WARSAW 2016**

AUTHORS

Hennadii Shcherbak, Roman Yatsynych

Public organization "Mirniy Bereg" ("Shore of Peace")



"JUSTICE FOR PEACE IN DONBAS" COALITION

The Coalition was established in December 2014 and includes 17 NGOs, mainly from the Ukrainian regions of Donetsk and Luhansk.

The Coalition members are:

Alchevsk Human Rights Analytical Centre, Centre for Civil Liberties
/ Euromaidan SOS, Civic Organization "Kharkiv Human Rights Protection Group," Donbas SOS,
Donetsk "Memorial," Eastern-Ukrainian Centre for Civic Initiatives, Ecological and Cultural Centre
"Bakhmat," Human Rights Centre "Postup" / Vostok SOS, Luhansk Regional Human Rights Centre
"Alternative," Luhansk Rights Defence Group, Public Committee for Protection of Constitutional Rights
and Freedoms of Citizens, Public Movement "Ochyshchennya," Public Organization "Mirny bereg,"
"Social Action" Centre NGO, Starobilsk District Public Human Rights Women's Organization "Victoria,"
Starobilsk Public Organization

CONTEXT

It has been more than 2.5 years since the events of the "Maidan", which finally revealed the true intentions and attitude of the Russian Federation (RF) towards Ukraine as a sovereign state. In order to implement their long-scheduled plans, taking advantage of the situation at that time in Ukraine, Russia – our "Guarantor" of sovereignty and integrity as per the Budapest memorandum – carried out the annexation of the Crimea and unleashed a war in Donbas. It established in Donetsk and Luhansk the self-proclaimed people's republics ("DNR", "LNR") by creating and arming illegal military groups and sending them against the Ukrainian state. Planned and implemented, the armed conflict has caused not only significant casualties and great economic losses, but also systematic and mass grave human rights violations in the climate of total impunity. Ukraine has already lost more than 9,500 dead. This military conflict has caused in Ukraine the greatest migration of population, fleeing from political persecution and war, after the Second World War. To secure the inevitable punishment of criminals was the main motivation for our work, which is presented here.

MONITORING METHODOLOGY

The goal of the monitoring is the collection, systematization, documentation and analysis of the crimes related to extrajudicial executions, forced disappearances, torture, arbitrary detention; locating individuals involved in these crimes, searching for missing persons and the provision of such information to law enforcement agencies and international organizations.

Monitoring is carried out in several stages: organizational and preparatory; practical study; analysis and synthesis of results; practical implementation of research.

The first stage represents collection and processing of primary information about the executed and tortured prisoners of war and civilian hostages; creation of an online chat on websites mb.net.ua and jfp.org.ua and the call center, which witnesses, close family members, relatives of the victims and, generally, any stakeholders can refer to; development of a questionnaire to be a template for interviewing victims and witnesses; formation and training of the mobile teams of documenters, who will conduct interviews with witnesses of torture and executions in different regions of Ukraine.

The second stage comprises detailed questioning of witnesses and documenting facts of executions without charge or trial, torture, search for and studying places of single and mass graves of executed and tortured; preliminary identification of unidentified bodies by comparing the data collected (information messages, photos, videos, interviews of witnesses, etc.); investigation by public investigators – former military with extensive experience (reserve AFU officers). At this stage monitoring visits with a purpose of gathering information are carried out.

The third stage entails processing and systematization of the data collected by the mobile teams of "Mirniy Bereg" ("Shore of Peace") and other members of the "Justice for Peace in Donbas" Coalition; inputting all the gathered, processed and systematized evidence data into a database.

The fourth stage consists in carrying out legal support in cases of executions, torture and disappearances in order to record and investigate crimes and punish perpetrators. If necessary, applications to the ECHR are prepared. Based on the information documented and processed, an analytical report shall be prepared, which will provide the foundation for development of recommendations for the Ukrainian authorities and international organizations. We expect wide dissemination of the report in Ukraine and abroad. Here is a brief summary of the preliminary version of the report.

MONITORING RESULTS

In the course of monitoring, we have collected evidence about the military conflict and prepared a brief description of the events that resulted in a large number of dead and captured soldiers (Izvarino Trap, Ilovaisk Trap, tragedy of IL-74 aircraft, the events of 5 September 2014, events in Donetsk and Luhansk airports, Debaltsevo Trap and other events). We have collected comprehensive data about deaths in battle, executed and tortured prisoners of war and civilians, as well as those gone missing. We have identified the unidentified bodies as accurately as possible, and encouraged their transfer to families for burial. We have structured and entered all collected information in an easy-to-use database which facilitates analysis.

Within the monitoring our organization carried out 56 trips to soldiers and civilians who had been released from captivity in the so-called "LNR" and "DNR" and, while in captivity, had witnessed extrajudicial executions and torture. The purpose was to document their testimony. We also visited those who witnessed a forced disappearance and could provide any information about the circumstances of the disappearance or whereabouts of the missing persons and, in the case of death – the whereabouts of their bodies. Evidence was recorded, either as video or audio. Other evidence which could help the investigation or be used in court was also collected. The data was then entered into the database of "Mirniy Bereg" and linked to existing cases. Some of the data was transferred to partner human rights organizations, in particular to the database of the "Justice for Peace in Donbas" Coalition.

Monitoring data shows that certain categories of prisoners and hostages are at greater risk of being killed or subjected to torture. Among the military, these are snipers, representatives of the "Pravyi Sektor", and those who have tattoos with national and State symbols. Among civilians, this risk depends on their language or religious identity. Overall, the level of risk for both the military and civilians was also related the place of residence or origin of prisoners (in particular, Western Ukraine), religion, membership in political parties, movements and public organizations of pro-Ukrainian background.



Vasiliy Pelish: "Having noticed my forearm tattoo 'Glory to Ukraine!' the gunman cut my hand off."

At the moment the database contains information on 6,001 victims, of whom 3,030 people are dead, 1,379 released from captivity, 278 hostages and 599 people still missing. The database contains information about 51 people shot dead in captivity, including 46 men and 5 women, 28 military and 23 civilians. As a result of torture, 15 people were killed, including 9 military and 6 civilian. Fifty-two prisoners endured torture and survived, of which 45 men and 7 women, 28 military and 23 civilian.

Data on victims from "Mirniy Bereg"'s database	
Overall number of victims	6 001
Dead	3 030
Released from captivity	1 379
Hostages	278
Still missing	599
Shot in captivity	51
Killed as a result of torture	15
Survivors of torture	52

The information we collected may help to reveal the truth about tragic events when due to failed military command, our military units suffered significant losses. **The monitoring also revealed illegal actions on the part of Ukrainian troops and soldiers of volunteer battalions in the zone of the armed conflict, in relation both to the opposite side's combatants and civilians.** After thorough and detailed analysis of these cases, we have come to the conclusion that they should be classified as human rights violations. These cases are, understandably, more difficult to investigate and document. The issue is made more complex by the fact that those who make statements about such human rights violations are accused of lacking patriotism or, even, of collaboration with the occupant. Irrespective of this additional difficulty, it is crucial to identify, scrutinize, document and record cases of unlawful actions on the part of the Ukrainian military in the conflict zone.

For example:

Hostilities on 5 September 2014 in the vicinity of such localities as Metalist, Tsvetnyie Peski, Shishkova, Krutaia Gora, Veselaya Gora of Luhansk Oblast

Interviews were conducted with witnesses who directly participated in hostilities; soldiers who got surrounded and fought to break out; soldiers who were injured during the fighting in the area and during the breakout from the encirclement; soldiers who were captured and later released; soldiers who

witnessed extrajudicial executions while in captivity; soldiers who took the bodies and the remains three days after the fighting. Of all the participants of the events which took place on 5 September 2014, one hundred and five people were found. Of those people:

- 39 were dead (including four who were taken prisoner and shot and one who on the third day was tortured to death in captivity),
- 24 were wounded,
- 21 missing and
- 6 captured and released.

During monitoring, we have expanded the capabilities of the database. It now contains cases not only on individuals but also on the events (for example, Ilovaisk Trap, September 5, 2014 events, and others) themselves. A new feature of the database also allows us to directly link the event, participants and witnesses together. As a result, we were able to identify possible suspects of war crimes and crimes against humanity. We plan to expand and improve the capabilities of our database, as we believe that the information contained therein can be used not only in investigation of crimes and search for the missing person, but as an evidence with regard to these crimes in national and international courts in the future.

In addition to expanding the evidence base of gross human rights violations, one of the additional results of monitoring was identifying the imperfections and gaps in the legislation associated with the military conflict. **In particular, we note that the main reason for ineffective work on tracing missing persons is the lack of coordination not only between public authorities and non-governmental (volunteer) organizations, but also between public authorities themselves.** Tracing missing persons is within the remit of a few law enforcement agencies, each of them maintaining its own database of missing persons, methodology and search tools. Eventually, it turns out that one authority informs the family that their relative is in captivity, while the other that the man disappeared and determining his whereabouts is not possible. **In addition, the tracing procedure is too bureaucratic and, being adapted to civilian life, it does not take into account current realities, much less the specifics of the armed conflict.**

In addition, according to the current legislation of Ukraine, the victim can be the mother, father, wife, husband, children of the missing person. However, typically, only one family member is defined as the victim in a criminal case. **Therefore, statistics on the number of victims do not always reflect the reality and are at times understated.**

The lack of knowledge of Ukrainian laws among families of missing persons with regard to their social and legal protection is more a regularity than an exception. It is, therefore, necessary to refine the available information materials, including those prepared by "Mirniy Bereg", and create a manual which would explain in a clear and comprehensible manner the rights, opportunities, tracing methods and the legal framework governing these matters. Such materials should be widely distributed, as our experience shows that even those relatives of the missing persons who are socially active and participate in the establishment and functioning of non-governmental organizations which bring together people with similar problems, do not have sufficient relevant legal knowledge.

Information collected and provided by the "Mirniy Bereg" shows the scale and depth of the tragedy of Donbas, the untold misery and suffering brought to Ukraine by the military conflict organized and guided by Russia. No signs of that policy being changed and the war coming to an end are visible. Shellings continue unabated, while people die, disappear or are tortured. Further still, there are signals which suggest the possibility of a new phase of full-scale hostilities.

Collected and documented evidence, testimonies of victims, witnesses of events suggest that some crimes committed in Eastern Ukraine during military conflict can well be qualified as crimes against humanity, as they are a part of a widespread and systematic attack directed against the civilian population. What is more, some crimes may fall under the definition of war crimes. Cases of killings, torture or inhuman treatment, intentionally causing great suffering, or severe injuries, arbitrary arrests and detentions, capture of civilians are recognized as such crimes in accordance with Article 8 of the Rome Statute. Crimes against humanity and war crimes are of particular interest to the International Criminal Court, if they are a part of a specific plan (policy) or, in case of a large-scale commission of such crimes. Therefore, the collection and verification of evidence establishing the scale of such crimes, the systemic presentation of the full picture of criminal actions on the part of the Russian Federation as well as of its puppet formations of "DNR" and "LNR" is an extremely urgent task.

The Ukrainian State should change its position regarding the existing impunity of criminals for their flagrant violations of human rights as well. All such crimes should be thoroughly investigated. Impunity undermines faith in justice and creates more and more violations of human rights. We firmly believe that it is necessary to toughen penalties for omission, negligence and lack of investigation. The principle of inevitability of punishment should act in relation both to those who committed the crime and those who ignore their responsibilities for effective investigation.

RECOMMENDATIONS

All parties to the conflict should:

- Take all possible actions to stop the fighting and violence in the conflict zone.
- Release immediately all persons arbitrarily deprived of their liberty.
- Take all possible actions to identify unidentified bodies and transfer to the families of the victims for burial.

Additionally, we recommend that:

- The Ukrainian law enforcement agencies coordinate their actions and take every effort to investigate crimes committed during the military conflict, which constitute flagrant violations of human rights – executions without charge or trial, enforced disappearances, torture, unlawful deprivation of liberty, detention and looting.
- The Ukrainian Parliament develops a bill on social and legal protection of civilian prisoners (hostages), civilians, missing persons and members of their families, similar to the existing law of Ukraine "On social and legal protection of servicemen and members of their families", and immediately adopt it.

PARTNER ORGANISATIONS

HR HELSINKI FOUNDATION
for HUMAN RIGHTS

MONITORING WAS POSSIBLE THANKS TO THE SUPPORT OF



UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER



THIS PUBLICATION HAS BEEN SUPPORTED BY



Auswärtiges Amt



This publication has been supported under the project „European support for effective monitoring of human rights in Eastern Ukraine” implemented by DRA (Berlin) and funded by the German Federal Foreign Office. The conclusions and recommendations of this report are given by the authors and editors of this publication and do not necessarily reflect the views of German Federal Foreign Office.

**JUSTICE FOR PEACE
IN DONBAS**

*Coalition of Human Rights
Organizations*

