

In trials of war crimes committed by Russia, Ukraine's domestic courts uphold human rights both in spirit and in law



Raushan Tara Jaswal

Published on: 04 Jun 2022

As international instruments and organizations have repeatedly failed to curb Russian aggression in Ukraine, the domestic courts of Ukraine are setting the bar high to render 'effective justice'.

— —

WITH the 100th day of the Russian invasion of Ukraine having been completed, Russia now effectively controls over [20% of the Ukrainian territory](#), and the war seems far from over. What started as a '[liberation](#)' for Donbas, the south-eastern region of Ukraine, has wreaked havoc across the country with [thousands of civilian](#) and combatant casualties (with deaths being much higher than the official toll).

The question of the hour seems to be revolving around the paralysis of international law and its diminishing significance during the devastation of an entire nation with the whole world watching. The imposition of sanctions by the West halted the Russian invasion of Crimea in 2014, and it currently seems to [adversely impact](#) and isolate the Russian economy. However, it is not enough to stop the current invasion.

But the question remains – how and whom do we hold responsible for the ongoing catastrophe and how can we ensure accountability for illegal actions and justice being served?

Commendable measures, but with no result yet

The instrumentalities of international law have spared no time or effort in delivering what seems to be swift justice, while the war is still underway by the way of 'provisional measures'. The [International Court of Justice](#) (ICJ) ordered the immediate suspension of the 'special military operation' and such a strong order is commendable.

However, this order is rendered inoperative due to a lack of an enforcement mechanism, as the Russian invasion is still underway, even more than two months after its order on [provisional measures](#). The main judgment on the Russian allegations of genocide committed by Ukraine in the Donbas region is still underway. A quick solution to the war seems highly unlikely, especially with Russia refusing to adhere to [this order](#).

A promising avenue of justice seems to have emerged through the International Criminal Court (ICC). While both Russia and Ukraine have not ratified the Rome Statute of the International Criminal Court (Rome Statute), the ICC has [opened an investigation](#) based on the referrals of 43 State Parties as per [Article 14 of the Rome Statute](#) and acceptance of ICC jurisdiction by [Ukraine as per Article 12\(3\) of the Rome Statute](#).

Recent precedence of the ICC exercising its jurisdiction in non-party States can also be seen in the case of the genocide of Rohingyas in Myanmar – where Myanmar is also not a State party to the Rome Statute. This has paved the way for the ICC to launch an investigation and hopefully proceed with trials soon.

Jurisdiction of the International Criminal Court

Apart from [State referrals under Article 14](#) of the Rome Statute and past precedence of investigation (and subsequent crimes) in the [case of Bangladesh/Myanmar](#) (non-party State) – where the crimes can be investigated if they can be sufficiently linked to the situation mentioned – [Ukraine has also accepted the jurisdiction](#) of ICC in pursuant to [Article 12 \(3\) of the Rome Statute](#). This has effectively allowed the ICC to exercise its jurisdiction over any alleged acts of war crimes, crimes against humanity or genocide committed on that State's territory. It is also a double-edged sword as it gives the ICC

jurisdiction over crimes committed by Ukrainian nationals in Ukraine (or even in Russia).

“***"The International Court of Justice (ICJ) ordered the immediate suspension of the 'special military operation' and such a strong order is commendable."***

However, without cooperation from Russia, investigation, trials (especially of superior military personnel, 'elected' leaders, and of certain crimes – such as the crime of aggression) this task is seemingly impossible. The past practice of the ICC has highlighted significant limitations like dispensing 'effective justice' by their inability to prosecute [highly placed individuals](#).

Apart from the lack of Russian cooperation, the ICC has limited jurisdiction as to 'the most serious crimes of concern to the international community' (Article 5, Rome Statute). For the purposes of the current Russian invasion, the crime that fits the bill would ideally be the 'crime of aggression' (Article 8 bis, Rome Statute). However, [limited jurisdiction](#) (Article 15 bis, Rome Statute) renders it ineffective.

While things may seem gloomy, there is a ray of hope as individual soldiers can be prosecuted under 'war crimes' (Article 8, Rome Statute), and 'crimes against humanity' (Article 6, Rome Statute). Since the investigation and the procedure of the ICC is quite detailed and long-drawn, recently, another form of justice has emerged that is proving to be more significant and effective than what can be achieved under any international mechanism.

Recent verdicts by Ukrainian courts

The local Ukrainian Courts have now taken it upon themselves in the midst of a war to render justice and recently found three different people guilty of war crimes – including [shelling in a civilian area](#) and [shooting and murdering an unarmed Ukrainian civilian](#).

In both instances, all accused persons of Russian nationality have pleaded guilty to these horrific crimes, which is in direct [contradiction](#) to the Russian denials of targeting civilians or even involvement in war crimes. However, these

rulings prove a significant step forward for Ukraine, especially in light of its claims of over [13,000 possible war crimes](#) committed by Russia since February 24.

Ukraine has also gone as far as [identifying 600 Russian war crimes suspects](#). This is a remarkable feat, especially since the Russian invasion is still underway and has left Ukraine in shambles. Compounded by the fact that Ukraine's President Volodymyr Zelensky [imposed martial law](#) and has [continually extended it](#).

During the suspension of ordinary civil law and the extension of military law and justice to civilians and combatants alike, these verdicts seek to deliver justice where all other international mechanisms seem to be failing. What is unique, though, is Ukraine's commitment to fulfilling its obligations under the international human rights regime during active wartime.

Human Rights during these trials

Instead of completely disregarding the Geneva Conventions and various international human rights instruments, the domestic courts of Ukraine instead have seemed to uphold human rights not just in spirit, but also in law.

“***Ukraine has also gone as far as identifying 600 Russian war crimes suspects. This is a remarkable feat, especially since the Russian invasion is still underway and has left Ukraine in shambles.***”

Not only have these domestic courts adhered to the principles of non-discrimination (Article 2 and Article 4 of the [International Covenant on Civil and Political Rights – ICCPR](#)), but provided an effective and speedy remedy to people affected by the Russian aggression, especially by competent judicial authorities offered by the legal system of the State (Article 2 (3) of the ICCPR). Even their first verdict of sentencing a Russian soldier to life in prison (instead of capital punishment) is in consonance with Article 4 (Derogation during Emergencies), Article 6 (Right to Life), and Article 7 (Right to be Free from Torture).

In fact, even though since it is a state of declared emergency, there could be certain derogations permitted from Articles 9 and 14 (Right to Liberty and Security and no arbitrary arrest or detention), it seems from the [reports of the trials](#) that these Russian soldiers have been well-informed of their charges, have been provided with required translations, have been provided with adequate legal representation, and have been presented in Court during their trials.

All these measures have ensured that the inherent dignity of the accused has been adequately upheld (Article 10, ICCPR). There have also been reports of [pre-trial investigations](#) further ensuring that the basic civil and political rights of Russian soldiers have been upheld in these trials conducted in Ukraine.

Ensuring minimum guarantees during an ongoing war and upholding the basic tenets of human rights during a criminal trial focusing primarily on war crimes has set the tone of seriousness going forward in Ukraine. While international instruments and organizations have repeatedly failed to curb Russian aggression in Ukraine, the domestic courts of Ukraine are setting the bar high to render 'effective justice'.

Since the authorities, especially the [Chief Prosecutor in Ukraine](#), are now [closely working](#) with the recent deployment of the ICC's '[largest ever](#)' [investigative](#) team, it will be interesting to see concurrent proceedings facilitating the delivery of justice.