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Commentary

Ensuring oversight and protection of life, health and well-being of all detained by the Russian Federation and in Russian controlled territories of Ukraine

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ABSTRACT

Objectives: Military action by Russian forces against Ukraine commenced on 24 February 2022. The Office of the United Nations High Commissioner for Human Rights has observed serious human rights violations in the context of the Ukraine war. A range of people are detained, not limited to those meeting the definition of prisoners of war, or prisoners, but including Russian soldiers who refuse to fight and the enforced disappearance of Ukrainian civilians.

Study design: This is a Commentary article.

Methods: This Commentary concerns the detainee's right to humane conditions of detention and right to life, health and well-being (including access to medical care) when in detention in Russian-controlled territories of Ukraine and when transported into and detained in the Russian Federation itself.

Results: There is evidence of violations of the rules of war and of fundamental human rights. Prohibition of torture and other ill treatment of people deprived of their liberty is shared across international human rights and humanitarian law frameworks.

Conclusions: Russia will leave the European Court of Human Rights on 16 September 2022. The United Nations Human Rights Council must swiftly respond and create new mechanisms to monitor Russian detention standards and uphold fundamental human rights to protect the lives, health and well-being of those detained, regardless of their status as prisoner, prisoner of war or other.

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Military action by Russian forces against Ukraine commenced on 24 February 2022, following parliamentary recognition of the independence of the self-proclaimed Donetsk and Luhansk People's Republics. The regional focus understandably has been on the military response to the invasion and the humanitarian response and evacuation of civilians.

On 30 March 2022, Cocco et al. highlighted the lack of attention directed towards the health and well-being of people living in Ukrainian prisons during the invasion by Russia.¹ There are however people detained by Russian military forces in Russian-controlled territories of Ukraine (number of detention settings unknown) and transferred to detention settings in the Russian Federation (hereafter “Russia”) itself (872 facilities²). These

detainees are not limited to those meeting the definition of prisoners of war (POW), or indeed prisoners, but include Russian soldiers who refuse to fight and the enforced disappearance of Ukrainian civilians to unknown locations in Russia.

The United Nations High Commissioner for Human Rights has observed serious human rights violations by Russia relating to the human and health rights of those deprived of their liberty during the Ukraine conflict. The United Nations High Commissioner for Human Rights, Human Rights Watch and the World Organisation Against Torture have issued substantive reports on the torture and inhumane treatment of POW and other detainees (torture, beatings, gang rape, forced standing for long periods, prolonged interrogation, use of electroshocks, solitary confinement, deprivation of water and food, denial of medical treatment) in Russian-controlled territories, including in the 21 filtration sites used to process Ukrainian POW and civilians before forcible transfer to Russia and

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during illegal transfer of individuals including humanitarian workers to Russian penal institutions in the Kursk and Bryansk regions and other unknown locations.^{3–7}

Further of note is the longstanding history of imprisonment in harsh environmental conditions of detention and associated threat to health and life of those deprived of their liberty in Russia itself.^{8,9} Concerns centre on the denial of access by inspecting commissions and detention conditions characterised by congestion, extreme cold, systematic violence and abuse, inadequate food provisions, poor sanitation and ventilation, inadequate health monitoring, denial of medical responses to torture, the denial of access to medical care as punitive measure, poor disease mitigation measures resulting in disease transmission (HIV, tuberculosis, COVID-19 and other diseases in circulation) and unexplained deaths of detainees.

Blatant disregard for the lives, dignity and health of detainees during the invasion of Ukraine has also occurred in other ways. The European Court of Human Rights (ECtHR) has issued interim measures to Russia to not carry out the death penalty against two Britons and a Moroccan national accused of ‘mercenary activities’ by the Donetsk Supreme Court and to ensure adequate conditions of detention with provision of sufficient medical care.¹⁰ There are however reports that prison conditions were expressly deteriorated by the authorities across 20 regions of Russia (including St. Petersburg, Tver, Ryazan, Smolensk and Rostov) to facilitate military recruitment of prisoners (particularly those with combat experience) for operations in the Donbass.¹¹ Detention of Russian soldiers in eastern Ukraine for ‘refusing to take part in the war’ has been documented.¹² Prisons also became military targets. On 29 July 2022, the Olenivka prison in Donetsk Oblast was attacked killing and wounding Ukrainian POW.¹³

Russian expulsion from the Council of Europe (CoE) on 16 March 2022 and the ECtHR (16 September 2022) leaves a concerning gap in access to justice by those detained by criminal justice authorities in Russia and by its armed forces in Russian-controlled territories and in the oversight and protection of the right to health of those living in Russian prisons and POW detention settings. Russia will only implement ECtHR judgements issued before 15 March 2022.¹⁴ The majority of pending cases will be frozen in the system.

The ECtHR has been instrumental in improving the health of prison populations in Europe.¹⁵ There are a host of ECtHR judgements against Russia regarding its treatment of people deprived of their liberty, especially concerning the violation of human and health rights under Article 3 of the European Convention on Human Rights (‘prohibition of torture’), many of which remain unimplemented by Russia.¹⁶ Judgements are primarily concerned with systemic inhuman and degrading treatment in detention (including in pretrial) in Russia regarding severe cell overcrowding and poor environmental health standards of detention (inadequate water, heating and ventilation, lack of separation between the sanitary and living areas, access to natural light, exposure to disease and vermin), threats to health and life in the form of exposure to violence, torture and inadequate medical care leading to chronic ill health and death (examples include *Kalashnikov v. Russia*, *Buntov v. Russia*, *Magnitsky v. Russia*, *Nogin v. Russia*, *Khloyev v. Russia* and *Ananyev and others v. Russia*).¹⁶ The ECtHR has also dealt with the context of POW detention following the Russia military conflict in Georgia (*Georgia v. Russia*) and underscored the right of Georgian civilians and POW by the Russian and/or South Ossetian forces (whose actions were attributable to the Russian authorities) to be treated humanely and detained in adequate conditions.¹⁶ On 1 July

2022 the ECtHR issued an interim measure seeking immediate action by Russia to protect the rights of detained Ukrainian POW and to provide them with appropriate medical assistance.¹⁷ This has been ignored.

Prohibition of torture and other ill treatment of people deprived of their liberty is shared in international human rights and humanitarian law (Common Article 3 Geneva Conventions), which provide that all detainees be treated in a humane manner. Notwithstanding these obligations during the conflict, Russia has ratified several relevant international human rights treaties (International Covenant on Civil and Political Rights (ICCPR), Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), International Covenant on Economic, Social and Cultural Rights (ICESCR)) upholding the rights of people in detention, including the right to health and life. Whilst it accepts individual complaints against the State under ICCPR and CAT and the inquiry procedures of the CAT, it has not extended a standing invitation to United Nations (UN) Special Procedures. Nor has it ratified OP-CAT (oversight/national preventive mechanisms) or the Second Optional Protocol to the ICCPR (abolition of the death penalty). This year it has failed twice in a row to appear at its review by the UN Human Rights Committee (March and July 2022).¹⁴

Whilst Russian authorities have allowed the CoE’s Committee for the Prevention of Torture to visit the country’s prisons and released some reports on conditions, there will be no more missions by this Committee, a glaring gap that requires immediate redress. This has substantial implications for ensuring the health of those detained, including their right to access appropriate medical care and the right to be protected from disease. Little is known about the access of UN agencies and independent monitors into detention sites on Russian-held territories and Russia itself and the ability to support timely and effective investigations into alleged breaches of both international human rights and humanitarian law. On 14 June 2022, Russia’s oldest antitorture human rights organisation (CAT Russia) was designated as a foreign agent and subsequently liquidated.¹⁸

Inadequate detention conditions, exposure to torture and violence, and medical neglect without legal, public or UN agency oversight and with threat of indiscriminate attacks on detention sites constitute a substantial risk to life, health and well-being for all detained during the Ukraine war. Lack of independent facility inspections and inhibited access to justice and access to healthcare (including medical responses to victims of torture) have enormous ramifications in terms of breaching their basic human and health rights. The routine denial of chronic illness and indeed palliative care of those detained poses a grave concern. There are potential public health ramifications, which could affect Russia, Ukraine and indeed Europe in terms of lack of oversight of disease mitigation and surveillance.

We must not ignore them or allow them to be left behind in the face of the Russian-Ukraine conflict and Russia’s expulsion from the CoE. Notwithstanding the lack of accountability and potential for arbitrary detention, torture, cruel and inhuman treatment, further rule of law backsliding could result in restoration of the death penalty by Russia. It is imperative that the UN Human Rights Council acts swiftly to respond and create new mechanisms to monitor all Russian detention standards wherever they are located, in times of peace and war, and regardless of detainee status as prisoner, POW or other.

Inter arma enim silent leges.

Author statement

Conflict of interest

I declare no competing interests. There is no funding to declare, the work is self funded.

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