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EUROPE

HUMAN RIGHTS ABUSES IN UKRAINE'S ARMED CONFLICT

Amidst the recent armed conflict in Ukraine, new allegations are surfacing of serious human rights abuses there including torture, cruel and inhumane or degrading treatment, and arbitrary executions in detention facilities across the country. A recent report by Amnesty International reveals that both Ukrainian forces and pro-Kyiv militia have ignored common international standards for adequate detention centers and carried out serious violations of the rights of both military and civilian prisoners.

Amnesty International's interviews with prisoners revealed that abuse in prisons is both frequent and widespread, and that it occurs on both sides of the conflict. These interviews also indicated informal militia, and anyone operating largely outside the chain of command, showed a greater propensity for violence and torture in the detainment of prisoners. Such groups on the separatist side include the Prizrak and Sparta battalion located out of the Donetsk and Luhansk regions. On the pro-Kyiv side, groups allegedly involved in torture include the Right Sector, a volunteer militia created by pro-Kyiv nationalist groups.

A majority of the worst abuses have taken place in detention centers not formally recognized by the state of Ukraine. Examples have included abandoned police stations, underground bomb shelters, and university buildings. Former prisoners have reported a wide array of abuses including excessive beatings, electric shock, and mock executions. Nearly all cases reported the withholding of emergency medical care, along with the deprivation of food, water, and sleep. Such abuses reportedly ended once prisoners entered official, state-run prisons.

Captives held in pro-Kyiv custody have come forward to identify at least four cases of arbitrary executions which took place after se-

vere beatings left the prisoners unable to move or speak. Prisoners and civilians held in the village of Krasniy Partizan have alleged more executions occurring in January of 2015. Several civilians in the village attempted to report what they had seen, sometimes even with video evidence of the executions which later became available on YouTube.

Although a majority of prisoners held by pro-Kyiv forces have reported the abuse suffered to local judges and police, the response has been slow. Many of the prisoners showed clear signs of abuse when reporting to local judiciaries including bruised faces, black eyes, and split lips. However, the government has not ordered investigations. Investigation and prosecution has been difficult because of the sheer amount of military groups, both formal and informal, on either side of the conflict holding prisoners. Amnesty International has received several different estimates from various sources as to the number of prisoners currently imprisoned throughout Ukraine. A lack of transparency has obstructed families seeking to locate imprisoned loved ones.

Amnesty International alleges violations of Common Article 3 of the Geneva Conventions of 1949 and violations of the International Covenant on Civil and Political Rights. Violations of Common Article 3 include the protection of prisoners of war and the standards by which detention facilities should respect prisoner's rights. Both treaty bodies are based on a right to be free of torture, cruel, and inhuman or degrading treatment. Various provisions under international human rights law, which applies during times of armed conflict both national and international, asserts the rights of persons placed in detention centers to judicial review of the legality of the detention. The United Nations (UN) Working Group on Arbitrary Detention outlines the legal standards for arbitrary detention as a possible violation of human rights law.

The UN Security Council has also en-

dorsed the “Minsk Agreements” reached by both parties. The thirteen-paragraph “pack of measures” calls for the creation of a security zone and reforms that would result in a new constitution, monitoring by the Organization for Security and Cooperation of Europe, and the continued disarmament of all paramilitary groups. Additionally, the UN Office of the High Commissioner for Human Rights (OHCHR) conducted a report encouraging sustained dialogue between the parties for seeking common ground.

The violations of international human rights law asserted by NGOs like Amnesty International, the OHCHR, and the UN Security Council collectively call for an immediate investigation into all possible human rights abuses in Ukraine and in particular, into the situation of Ukraine’s informal detention facilities. Rights groups believe that a need for transparency and the cooperation of law enforcement is evident, as well as support from local judiciaries. Investigation and prosecution of potential war crimes and crimes against humanity are appropriate and necessary next steps once the conflict in Ukraine has ended.

By Lindsey White, staff writer

MANDELA RULES CREATE NEW STANDARDS FOR INTERNATIONAL TREATMENT OF PRISONERS

“It is said that no one truly knows a nation until one has been inside its jails. A nation should not be judged by how it treats its highest citizens, but its lowest ones.” –Nelson Mandela

On May 22, 2015, the United Nations Commission on Crime Prevention and Criminal Justice (CCPJC) approved a new set of standards for the treatment of prisoners called “The Mandela Rules,” named after the late South African President Nelson Mandela. The Mandela Rules are intended to revise the United Nations Standard Minimum Rules for the Treatment of Prisoners (SMRs), which the United Nations (UN) has not changed for nearly sixty years. During the five-year “targeted revision” pro-

cess, intergovernmental expert groups worked together to rewrite the SMRs’ text. Although not legally binding, the SMRs are considered one of the only sources of standards related to detainment practices, and are used as the primary instrument to monitor, inspect, and assess the treatment of prisoners.

Since the adoption of the original SMRs in 1955, international developments in human rights law, technology, and social norms have left the rules out of date. The resolution adopting the Mandela Rules takes into account post-1955 developments including the widespread adoption of the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The revisions also address relevant contemporary human rights concerns such as those expressed in the 2011 report of Juan Méndez, the UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Special Rapporteur). The Special Rapporteur’s report argued that solitary confinement in excess of fifteen consecutive days amounts to torture or degrading punishment.

Although the Mandela Rules still require approval by the UN General Assembly this fall, David Fathi, Director of the American Civil Liberties Union’s National Prison Project, called the new rules “a tremendous step forward, particularly given that the original rules were silent on [solitary confinement].” The revisions provide that solitary confinement “shall be used only in exceptional cases as a last resort for as short as a time as possible and subject to independent review,” and that “indefinite” and “prolonged” solitary confinement (more than fifteen days) is strictly prohibited. In an open letter to the chair of the CCPJC, the Special Rapporteur regarded the new rules as “real progress in the prevention of torture and ill-treatment and help to ensure accountability.”

Other revisions include standards that affirm fundamental human rights principles, such as the responsibility to provide general

living conditions to “all prisoners without exception,” and to conduct searches “in a manner that is respectful of the inherent human dignity and privacy of the individual being searched, as well as the principles of proportionality, legality and necessity.” Rules 83–85 also require prison administrators to allow for independent inspection of prisons, including access to relevant documentation and unsupervised contact with prisoners. Yury Fedotov, the head of the United Nations Office on Drugs and Crime, described the new rules as “one of the most significant human rights advances in recent years.”

However, as Mr. Fathi put it, “[t]he Rules are only as good as their implementation.” In order for the new rules to be successful, Mr. Fathi explained that public awareness is key, as is a willingness on the part of decision makers to use the Mandela Rules as a reference point for evaluating international criminal justice institutions. According to Andrea Huber, Policy Director of Penal Reform International—one of the advocacy groups that participated in the revision process—there are still major obstacles in fully implementing the Mandela Rules. One obstacle she describes is the common attitude civil society has towards incarcerated persons, such as the idea that “it is justifiable to mistreat [prisoners] because they have been convicted of crimes, and so their legal status removes them from the realm of human rights protection.”

The hope is that if fully implemented, according to Yuval Ginbar, Legal Advisor at Amnesty International, the rules “would help turn imprisonment from a wasted time of suffering and humiliation into one used for personal development leading to release, to the benefit of society as a whole.” The resolution adopting the Mandela Rules also calls for July 18 to be known as “Mandela Prisoner Rights Day,” which will promote “humane conditions of confinement and raise awareness of prisoners as a continuing part of society.” Perhaps the greatest impact of these revisions, however, lies “in the reconciliation of human rights norms with criminal justice standards.” Rights groups believe that the Mandela Rules represent an

important first step towards meaningful penal reform and the universal recognition of prisoners’ equal human rights regardless of their legal status.

By Andrea Flynn-Schneider, staff writer

ISOLATED: DISABLED CHILDREN IN RUSSIA’S EDUCATION SYSTEM

The Russian government has attempted to make significant commitments to promote the rights of disabled children by expanding inclusive education across the country, revising curricular standards, and training more teachers. However, rights groups like Human Rights Watch (HRW) have argued that Russian schools are still leaving too many children with disabilities on the fringes of the education system.

Although Russia ratified the Convention on the Rights of Persons with Disabilities (CRPD) in 2012, according to HRW, the government is still struggling to enforce the rights outlined in the treaty. In terms of education, CRPD Article 24 requires that “persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability.” Furthermore, Article 29 of the United Nations (UN) Convention on the Rights of the Child (CRC) guarantees the right to education on the basis of equal opportunity, directed to the “development of the child’s personality, talents and mental and physical abilities to their fullest potential.”

Since 2012, Russian law has provided a choice for families with children with disabilities to study in a mainstream school, a specialized school, or at home. However, a recent report released by HRW argues that despite substantial policy changes in recent years, the Russian education system is still discriminating against children with disabilities in a variety of ways, including in the ability to make the choice of educational venue offered by Russian law. The report, titled “Left Out: Obstacles to

Education for People with Disabilities in Russia,” is based on over two-hundred interviews with families, visits to ten state institutions, meetings with officials from the Ministry of Education and Science, and meetings with officials from the Ministry of Labor and Social Protection.

The report notes that the lack of infrastructure set up to assist persons with disabilities is a significant barrier to ensuring equal access to education in Russia. Most schools and apartment buildings lack ramps or lifts to help children enter and move around the school and a majority of cities also lack suitable transportation to help children get to and from school. Within mainstream schools, specialized accommodations or properly trained teachers are still extremely rare. Because of these limitations, most children with disabilities remain either segregated in special schools or isolated in their homes.

Since mainstream schools usually lack the appropriate accommodations or refuse to admit children with disabilities, families often send their students to a specialized schools out of necessity. These schools are usually located far away from children’s families, who lack the financial capacity to visit, and may offer inadequate academic programs. The only alternative for families is to keep children at home where they have little interaction with teachers and their peers.

While laws have changed, attitudes in Russian society are developing at a much slower rate. Human Rights Watch (HRW) reported that some school administrators refuse to admit children with disabilities based on false assumptions that they are unable to learn or that their behavior will be disruptive to other students.

In a similar report issued in 2014, titled “Abandoned by the State,” HRW found that nearly thirty percent of children with disabilities in Russia live in state orphanages where, in addition to a lack of access to education, “they may face violence and neglect.” Traditionally, children born with physical damage or cerebral palsy are labeled to have “multiple severe

developmental disabilities” at birth, and doctors strongly recommend families abandon the child. Even families who still take children with cerebral palsy or physical disabilities home oftentimes send the children back to orphanages later on as toddlers. Within these orphanages, children with disabilities frequently spend their days in the “mercy department,” where they lie in bed all day and cannot play with other children or meet with adoptive parents. Once they reach adulthood, having had no chance to develop and no benefit of education, they often face a grim future in a mental asylum.

Individuals not confined to mental asylums still face significant challenges upon reaching adulthood. Due to their lack of significant education, adults with disabilities struggle to attend universities or gain the professional skills necessary to find employment. According to continued research done by HRW, these individuals are stuck in a cycle of poverty with little resources to help them break out.

Going forward, HRW recommends an increase in efforts by the Russian government to reverse these long-standing practices and severe restrictions on education in accordance with Russia’s commitments under CRPD. HRW advocates for further integration of children with disabilities into the education system. In the long-term, HRW advocates a move away from current practices of categorizing children according to disability and perceived ability to learn, which it says perpetuates false stereotypes and discrimination.

By Summer Woods, staff writer

THE NEED FOR LEGAL CHANNELS TO REMEDY THE EU MIGRATION CRISIS

The European Union (EU) is facing a refugee crisis, as many refugees enter by any means necessary. According to Human Rights Watch (HRW), in 2014, at least 219,000 people crossed the Mediterranean into Europe, up from 60,000 the previous year. According to the United Nations High Commission for Refugees (UNHCR), from January through October 2015, 705,251 refugees arrived by sea

and another 3,250 died or went missing. Individual member states have inconsistent refugee and asylum policies, and the EU as a whole has exacerbated the crisis by focusing on preventing departures and limiting arrivals.

The EU and its member states are required to uphold the 1951 Convention Relating to the Status of Refugees, the Charter of Fundamental Rights of the EU, and the laws of sea when creating and adopting refugee and asylum policies. According to HRW, the EU should shape legal pathways for asylum seekers and migrants escaping regional conflicts—in Syria and elsewhere—in accordance with its international legal obligations. More specifically, the EU should implement generous resettlement programs, ease access to family reunification programs, and simplify access to humanitarian visas.

Government forces and pro-government militias are exacerbating the conflict in Syria, carrying out attacks on civilian areas, including through the use of high explosive barrel bombs, as reported by HRW. In addition, the extremist Islamist group, ISIS, and al-Qaeda's affiliate in Syria, Jabhat al-Nuhsra, are responsible for systemic violations of international human rights and humanitarian law, including the targeting of civilians, kidnapping, and extrajudicial executions. As a result, the death toll after four years of the Syrian Civil War is estimated at 210,060 people, nearly half of them civilians. The *New York Times* estimates that the violence has claimed more than 13,000 children since the start of the Syrian Civil War, with 3,500 killed in 2014.

UNHCR has called this crisis “the biggest humanitarian emergency of our era,” but the EU has allowed significantly fewer refugees to enter its territory. As of early May 2015, UNHCR had registered almost 4 million Syrian refugees in neighboring countries and North Africa, compared to 216,300 in the European Union in that same period. Though EU leaders recently agreed to a 17-point plan to address the refugee crisis, HRW and other civil society groups continue to call on the EU to take a more central role in the handling of the refugee

crisis.

In order to compensate for the large influx of asylum seekers, the EU must allow safe access for people in need of international protection. Pursuant to the UN Convention on the Law of Sea (UNCLOS) and the International Convention for Life at Sea of 1974 (SOLAS), to which the EU member states are parties, they are obligated individually to come to the assistance of any person distressed at sea. In addition, coastal states must develop adequate search and rescue procedures, and the ship master bears the responsibility of the people rescued at sea. Furthermore, according to Article 12 of the International Covenant on Civil and Political Rights (ICCPR), “everyone shall be free to leave any country, including his own.” This provision guarantees the right to enjoy civil and political freedom, and freedom from fear and persecution. Asylum seekers may therefore travel to neighboring countries and to the EU in order to escape political crisis. EU member states have an obligation to accommodate refugees seeking safety, including within their maritime territories.

As suggested by HRW, the EU should strengthen existing EU and international laws, and enforce their current legal obligations. EU governments should improve asylum and reception conditions, share responsibilities, and open their borders to more refugees. In addition, they need to take steps to protect incoming refugees from civil rights abuses, such as the police abuses in Macedonia. Any state that undergoes a rescue effort of asylum seekers and refugees should take responsibility for the group. No coastal state should deny an individual or group of people entry into the country because of their legal status. Thus, European states should fulfill their obligations to rescue and care for refugees in compliance with their international and EU legal obligations.

By Rudy Williams