

April 2024

HOLDING THE DICTATORS TO ACCOUNT



Holding the Dictators to Account

This policy brief is based on a webinar convened on 25 March 2024. The speakers were: Kateryna Rashevskya, a lawyer from the Regional Centre for Human Rights in Ukraine; Guillem Cano-Palomares, deputy head of the Secretariat of the PACE Committee on Legal Affairs and Human Rights; Anais Marin, the UN Special Rapporteur for the Situation on Human Rights in Belarus; and Kanstantsin Dzehtsiarou, Professor of Law at the University of Liverpool. While this document is based on the webinar participants' comments, responsibility for the accuracy of the content rests with the author. A recording of the webinar is available at www.warwick.ac.uk/wubhub/

Executive summary

- Russia has been accused of a range of war crimes in Ukraine, including murder, torture, rape, other sexual violence, and the deportation of Ukrainian children to Russia. There are a range of instruments and international mechanisms that can potentially help to hold the Russian leadership and others to account.
- In March 2023 the International Criminal Court (ICC) issued arrest warrants for Russian president Vladimir Putin and Russia's commissioner for children's rights Maria L'vova-Belova for the forcible transfer of children out of Ukraine. The charges against these individuals could be expanded or charges brought against new suspects.
- Some have called for the ICC to issue an arrest warrant for Belarus's dictator, Alyaksandr Lukashenka, on the same charges to reflect claims of Belarus's involvement in deportation and the 're-education' of children. Efforts are also ongoing to hold the Belarusian authorities to account for repressions and human rights violations that have taken place since the presidential election of 2020.
- If the international community does not hold the dictators to account for war crimes and human rights violations, then these travesties are likely only to proliferate or to recur. It is necessary to ensure legal tools are underpinned by resolute political will.
- International actors must continue to support independent media and human rights groups to document violations of human rights norms and international humanitarian law, to inform audiences about such violations and procedures for redress, and to pressure those responsible to desist from such actions.
- In the context of the Russian invasion of **Ukraine**, efforts could be stepped up to prosecute Russia for the crime of aggression at an *ad hoc* tribunal. It should also include compensation mechanisms and considerations of transitional justice in the future.
- In the case of **Belarus** there needs to be a thorough debate about mechanisms of transitional justice and their future application in the country when the current authorities are no longer in power. These might include amnesties and lustration laws.

Table of Contents

<i>Holding the Dictators to Account</i>	2
Executive summary	2
1. Introduction	4
2. Accountability for war crimes in Ukraine.....	4
3. Belarus: Accountability for ongoing human rights violations	5
4. Accountability and transitional justice	6
5. Policy recommendations: Crime and accountability.....	8
Acknowledgements.....	9

1. Introduction

Russia's invasion of Ukraine raises many ethical challenges. Russia's violation of human rights norms and international humanitarian law creates unusual difficulties for mechanisms of accountability given that the violator is a permanent member of the United Nations Security Council (UNSC) and possesses the world's largest nuclear arsenal.

The horrors of the war were exposed starkly when Russian forces retreated from the town of Bucha in March 2022, only weeks after the large-scale invasion. Russian troops left behind evidence of torture and summary execution; citizens' corpses lay in the road with their hands tied behind their backs. The town's name has become synonymous with allegations of Russian war crimes. Since then, Russian forces have been accused of 'wilful killing, torture, rape and other sexual violence, and the deportation of [Ukrainian] children to the Russian Federation.'¹ Belarus, whose territory was used as a staging area for the Russian invasion, has provided infrastructure and other ancillary support to Russia's war effort and is widely seen as a co-aggressor in the conflict. It, too, has been implicated in the deportation of children from Ukraine.

In March 2023 the International Criminal Court (ICC) issued an arrest warrant for Russia's president Vladimir Putin and Russia's commissioner for children's rights Maria L'vova-Belova for the deportation of children. This was 'an unprecedented event' which demonstrated 'a resolute commitment to hold perpetrators [of crimes] accountable here and now.'² But there are also several obstacles to justice being delivered and this policy brief strives to advance recommendations to ensure that Putin and others are held accountable.

2. Accountability for war crimes in Ukraine

(i) *The International Criminal Court*

Much as the arrest warrants issued for Putin and L'vova-Belova spurred hope in some quarters, there remain challenges for their execution. Kateryna Rashevka explained that the ICC warrants had several aims besides the arrest of the two named individuals: they were an instrument for isolating Russia's leaders, a form of deterring further deportations of children from Ukraine, and also an effort to bring about the return of those children already taken.

There has been mixed success in achieving these goals. On the one hand, as Rashevka pointed out, Russia's foreign minister has toured the Global South freely and Russia does not look like an isolated actor on the world stage. Russia has partnerships with states in Africa and the Middle East and, arguably, has expanded these partnerships since its large-scale invasion of Ukraine. It is only western actors that have broken ties to Moscow.

On the other hand, the warrants appear to have affected the Russian ruling regime's policy. While very few children have been returned to their homes in Ukraine, there was a perceptible shift in

¹ United Nations Office for the High Commissioner for Human Rights (October 2023), 'Report of the independent International Commission of Inquiry on Ukraine' (<https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/coiukraine/A-78-540-AEV.pdf>, accessed 29 April 2024).

² Comment by Kateryna Rashevka during the webinar.

Russia's policy which began to focus on 're-education' in summer camps rather than taking more children.

The ICC has options for doing more. One option is to expand the case to new suspects. Some representatives of Belarusian opposition would like the ICC to issue an arrest warrant for Alyaksandr Lukashenka on the same charges, since it is well established that Ukrainian children have also been taken to Belarus.³ A second option is to expand the chargesheet against existing suspects. Rashevskaya posited that the 're-education' of children – which may amount to what, in common parlance, would be called 'brainwashing' – could itself constitute a crime against humanity.

(ii) *The Council of Europe (CoE) and the Parliamentary Assembly of CoE (PACE)*

The Council of Europe is another institution that has been active in efforts to hold the Russian and Belarusian regimes accountable for actions in Ukraine.⁴ Guillem Cano-Palomares outlined the measures the Council of Europe, and especially PACE, has adopted. Perhaps one of the most obvious and headline-grabbing moves was to expel Russia from the organisation after the February 2022 invasion of Ukraine. Article 8 of the Council's statute allows the body to suspend and ultimately expel a member which fails to respect the rule of law and human rights.⁵

PACE has also called for an *ad hoc* criminal tribunal to prosecute crimes of aggression. This seeks to complement, not duplicate, the ICC process. While the ICC addresses war crimes and crimes against humanity, it has no remit to prosecute crimes of aggression. PACE's resolutions have, from the beginning, named Belarus as well as Russia.

In PACE's January 2023 resolution, 'Legal and Human Rights Aspects of Russia's Aggression Against Ukraine', three areas are covered: war crimes and potential genocide; compensation to Ukraine for damage caused; and crimes of aggression.⁶ PACE has made clear that personal immunity should not apply for state leaders and that the tribunal must 'be as international as possible' or else it will be hard to override immunities. In respect of compensation, the May 2023 Council of Europe summit agreed to compile a register of damages in response to a motion originating in the Parliamentary Assembly (PACE). The register opened to claims in April 2024.

3. Belarus: Accountability for ongoing human rights violations

Lukashenka's complicity in Russia's war and associated crimes only adds to an already long chargesheet against him. Since the rigged presidential election of 2020 there have been 'massive and

³ National Anti-Crisis Management (27 June 2023), 'Evidence of the war crimes committed by Lukashenko was submitted to the International Criminal Court' (<https://www.belarus-nau.org/en/post/evidence-of-the-war-crimes-committed-by-lukashenko-was-submitted-to-the-international-criminal-court>, accessed 13 May 2024).

⁴ Belarus is not a member of the Council of Europe. Its retention and use of the death penalty is one of the major obstacles, alongside its failure to uphold human rights, democracy and the rule of law. Belarus was a signatory of certain Council of Europe conventions although cooperation ended as a result of its role in the Russian invasion of Ukraine.

⁵ Council of Europe (5 May 1949), 'Statute of the Council of Europe' (<https://rm.coe.int/1680306052>, accessed 29 April 2024).

⁶ Parliamentary Assembly of the Council of Europe (26 January 2023), 'Legal and human rights aspects of the Russian Federation's aggression against Ukraine' (<https://pace.coe.int/en/files/31620/html>, accessed 29 April 2024).

systematic human rights violations' in Belarus, as Anais Marin explained. She lamented the complete immunity that has existed for the perpetrators of violations. She said that citizens who complained to the authorities about how they had been treated sometimes only found themselves the targets of retaliatory measures by the state.

The lack of accountability after 2020 meant that human rights violations have continued. Indeed, one of the main reasons for holding people to account, aside from justice for the victims of crimes, is to prevent reoccurrences committed by the perpetrators. In recognition of this, the UN Human Rights Council established a special mechanism for Belarus in 2021.⁷ Outside of this the opportunities for holding Lukashenka and his administration to account are regrettably slim. The ICC is unlikely to consider itself competent to rule on Belarus when that country has not signed the Rome Statute. Moreover, the UN Security Council is constrained by the fact two veto-wielding permanent members, Russia and China, are likely to protect the incumbent Belarusian leaders from punishment. Since the ICC prosecutes individuals, not states, this could change following a change of leadership in Belarus.

For now, the lack of accountability Lukashenka and other Belarusian officials have faced for the events of 2020 only exposes the difficulties the international community faces in seeing justice for war crimes in Ukraine. Furthermore, it reiterates the need to ensure local independent media and human rights groups are supported financially or otherwise to document ongoing violations in Belarus as during the Ukraine war. Such reporting will also keep up the pressure on those responsible for violations.

4. Accountability and transitional justice

Whether in respect of Ukraine or Belarus, the instruments discussed in the previous sections will only work if matched by political will. This is a longstanding challenge. Kanstantsin Dzehtsiarou, for example, said he saw only a 'lukewarm reaction' from international organisations to the events in Belarus in 2020.

Both Ukraine and Belarus are likely to undergo processes of transitional justice in the future. In Ukraine, processes of transitional justice will seek to hold to account war criminals and compensate the victims of war. In Belarus, people will similarly strive to bring to account those complicit in repressions and human rights violations during 2020 and after. While the two situations are very different, some of the same processes will apply and are likely to include tribunals, whether criminal tribunals (discussed earlier) or some system of truth and reconciliation commissions.

Another common mechanism of transitional justice is lustration laws, which seek to prevent those implicated in past political misdemeanours from occupying certain roles in the new regime. Ukraine has already had such laws, both in dealing with the Soviet period and the end of the Yanukovich presidency, and it is likely to see more resulting from the war.⁸ Belarus, too, may adopt such laws once the Lukashenka regime is out of power.

⁷ United Nations Human Rights Council. OHCHR examination of the human rights situation in Belarus (<https://www.ohchr.org/en/hr-bodies/hrc/ohchr-belarus/index>, accessed 29 April 2024)

⁸ On Ukraine's past experiences with lustration laws, see chapters 6 and 8 in Cynthia M. Horne and Lavinia Stan (eds.), *Transitional Justice and the Former Soviet Union: Reviewing the Past, Looking Toward the Future* (Cambridge University Press).

Lustration must be carried out in accordance with rule of law. As Dzehtsiarou pointed out, the European human rights regime has sometimes taken issue with such laws, which must be predictable and proportionate.

Another mechanism is amnesties. These are often appropriate for officials working in lower levels of the state bureaucracy. In Ukraine, amnesties might be applied to those Ukrainian citizens working in the administrations of occupied regions. In Belarus, too, an amnesty could apply to junior civil servants. In the absence of amnesties, the scope of punishment may compromise the ability of the state to function. It is not practicable, as Dzehtsiarou said, to arrest every judge in Belarus – or else who will arbitrate? – and yet every judge is in some way complicit in the repressions.

In both Ukraine and Belarus, justice must be meted out in a manner that is just. Defendants' rights must be upheld however uncomfortable and difficult that might be. That is part of the process of holding the dictators, and their accomplices, to account.

5. Policy recommendations: Crime and accountability

1. Persist with and bolster efforts to hold individuals to account for war crimes and human rights violations

Although there are many obstacles to seeing justice served, the gains are considerable. Unless individuals are held to account, there is little to prevent repeat crimes either by the same or other individuals. Successful accountability measures will have a strong demonstrative effect in international affairs. Signatories of the relevant international agreements could bolster existing efforts, for example by expanding the ICC charges against existing suspects or bringing charges against additional suspects.

2. Support independent media and human rights groups to document violations of human rights norms and international humanitarian law

Outside actors, including international media, should continue to support local independent media and human rights groups in order to document violations, but also to inform people inside and outside the countries affected, and to maintain pressure on those responsible.

3. Ensure *ad hoc* criminal tribunals comprise diverse membership in order to assure their effectiveness

The Council of Europe proposes a special tribunal to prosecute the Russian leadership and others for the crime of aggression against Ukraine. Personal immunities, otherwise enshrined in international law, must not apply; to make this possible the tribunal composition must reflect the international community as a whole and not be dominated by 'western' states.

4. Bolster compensation mechanisms for the victims of Russia's invasion of Ukraine and repressions in Belarus

The Council of Europe has opened a register for compensation claims resulting from Russia's war against Ukraine. It or other international organisations could create a similar register for Belarusians. Such a register can cover claims for financial recompense for human rights violations and war crimes, for assets seized by either Russia or the incumbent Belarusian authorities, or ecological damage caused by Russia's military action.

5. Prepare transitional justice mechanisms for the future that comply with international laws and human rights norms

In both Ukraine and Belarus emotions will run high when positive change comes. International NGOs could play a role in training and helping to prepare transitional justice mechanisms such as lustration laws and helping to ensure their compatibility and compliance with existing human rights norms and laws. No one benefits in the long run if corners are cut to penalise perpetrators.

Acknowledgements

This policy brief is based on a webinar convened by the Warwick Ukraine-Belarus (WUB) Hub. We are grateful to the contributors to the webinar for sharing their ideas and thoughts. Whilst the brief does attribute ideas and comments to the individual webinar contributors, responsibility for any errors in reporting or of fact rests with the author. The policy brief was written by Paul Hansbury and he thanks Elena Korosteleva, Emellyne Forman and Tatsiana Chulitskaya for feedback and assistance, and Yana for the cover design.



*Warwick Ukraine-Belarus Hub
Institute for Global Sustainable Development
University of Warwick*

www.warwick.ac.uk/wubhub/