



Human Rights Committee consideration of the 6th Periodic Report of the Russian Federation

International Commission of Jurists

Submission on the list of issues

The International Commission of Jurists (ICJ) wishes to provide its views to the Human Rights Committee, in advance of the preparation of the list of issues for the Periodic Report of the Russian Federation. This submission focuses on violations of human rights in the context of counter-terrorism and counter-extremism laws and practices, and on erosion of the independence of judges and lawyers. In particular, the ICJ wishes to highlight the lack of independent and effective investigations, and impunity, for gross violations of human rights in the course of counter-terrorism operations in Chechnya and the North Caucasus; increasing harassment of lawyers; harassment and restrictions on the rights of human rights defenders; and extradition and other transfers of suspects to countries within the Shanghai Co-operation Organisation, in violation of the obligation of *non-refoulement* to face a real risk of torture or other serious violations of human rights.

1. Impunity for Gross Violations of Human Rights

Impunity in Counter-terrorism operations in the North Caucasus

Despite the diminishing intensity of the Chechen conflict, practices of arbitrary, including secret, detention, torture and cruel, inhuman or degrading treatment, and enforced disappearances continue to be widespread in Chechnya, as well as elsewhere in the North Caucasus, in contravention of the Russian Federation's obligations under the International Covenant on Civil and Political Rights (ICCPR). There are numerous reliable and consistent reports of arbitrary or secret detentions, extra-judicial executions, and torture and other ill-treatment both at illegal detention facilities run by Chechen pro-federal forces under the control of Chechen President Kadyrov; and at places of detention controlled by the military

or central Government.¹ These violations breach the Russian Federation's obligations under articles 6, 7, 9, 10 and 16 of the ICCPR. The ICJ Eminent Jurists Panel on Terrorism, Counter-terrorism and Human Rights, at its hearing in Moscow in 2007, heard compelling testimony from Chechen victims of these violations of human rights and their families.²

Underlying and perpetuating these violations of human rights are chronic problems of impunity, and lack of effective investigation, legal redress or remedies for victims, in violation of the Russian Federation's international law obligations under article 2 of the ICCPR, to investigate, prosecute and provide full reparations for violations of human rights. Successive judgments of the European Court of Human Rights (ECtHR) testify to delayed and wholly ineffective investigations into cases where there is substantiated evidence of torture,³ arbitrary killing,⁴ and enforced disappearance⁵ involving members of the security forces. The ECtHR has repeatedly found that investigations were begun late and were inexplicably delayed and adjourned; that prosecutors' instructions to investigate were either ignored, or followed only after long delays, and crucial witnesses were not interviewed, or relevant inquiries not made; and that victims and family members were not adequately involved or kept informed of progress in the investigation.⁶

These findings were reflected at the Moscow hearing of the ICJ Eminent Jurists Panel, where both lawyers and relatives of victims told the Panel that it was common practice for investigations into actions of the military and law-enforcement bodies not to be closed, but to be suspended for long periods, so that relatives cannot obtain a final judgment and so have no possibility of

¹ Committee Against Torture, Concluding Observations on the Russian Federation, CAT/C/RUS/CO/4, Nov. 2006, para.23; Eminent Jurists Panel Russia hearing, evidence available at <http://ejp.icj.org> ; European Court of Human Rights (ECtHR): *Luluyev v Russia*, App No.69480/01, *Bazorkina v Russia*, App. No.69481/01; *Imakayeva v Russia*, App No.7615/02, *Isayeva, Yusopova and Bazayeva v Russia*, App. No. 57947/00, *Chitayev and Chitayev v Russia*, App. No. 59334/00.

² The Eminent Jurists Panel, established in 2005 and chaired by former Chief Justice of South Africa, Arthur Chaskalson, is a group of senior judges and lawyers from around the world whose mandate is to examine the compatibility of laws, policies and practices, which are justified expressly or implicitly as necessary to counter terrorism, with international human rights law and, where applicable, with international humanitarian law. Its final report will be released in early 2009.

³ *Chitayev and Chitayev v Russia*, op cit, para.165.

⁴ *Isayeva, Yusopova and Bazayeva v Russia*, op cit, paras.217-225; *Isayeva v Russia*, op cit, paras.221-224; *Estamirov v Russia*, App. No.60272/00, para.95; *Aziyevy v Russia*, App No.77626/01, para.96; *Musayev v Russia* App. No.8979/02, para.165.

⁵ *Luluyev v Russia*, op cit paras.96-101; *Bazorkina v Russia*, op cit, paras.121-124; *Imakayeva v Russia*, para.151; *Basayeva v Russia*, para.130; *Takhayeva v Russia*, App. No.23286/04, paras.89-96; *Khalidova v Russia*, app. No.22877/04, paras.93-98; *Culpa Akhmatova v Russia*, App. Nos.13569/02 and 13573-02, paras.99-108.

⁶ *Bazorkina v Russia*, para.121- 124; *Isayeva, Yusopova and Bazayeva v Russia*, op cit, para.217-222; *Kashiyev and Akayeva v Russia*, op cit, para.166; *Luluyev v Russia*, op cit, paras.99-100; *Bazorkina v Russia*, op cit para.124; *Isayeva v Russia*, op cit, paras.221-222; *Estamirov v Russia*, op cit para.89-95. *Lyanova and Aliyeva v Russian*, App. Nos.12713/02 and 28440/03, paras.102-109; *Rasayev and Chankayeva v Russia*, app. No. 38003/03, paras.71-78; *Khalidova v Russia*, App. No.22877/04, paras.93-98; *Takhayeva v Russia*, App. No.23286/04, paras.89-98.

appeal.⁷ Where the suspension is found to be unlawful, often, the investigation will be briefly re-opened, and then suspended again.⁸ Furthermore, attempts by relatives to access documents relevant to the investigation, such as forensic certificates, are routinely denied, purportedly on grounds of confidentiality. Difficulties in securing convictions of state agents for violations of human rights⁹ are exacerbated by lack of judicial independence, in particular in Chechnya, where conviction of state agents may place judges in danger, as well as adversely affecting their security of tenure.¹⁰ This situation is in contravention of the UN Basic Principles on the Independence of the Judiciary, in particular Principles 1, 2, 11 and 12.

Where victims or their families attempt to seek justice and obtain reparations for violations of human rights, either in the domestic courts or before the ECtHR, they typically face harassment and threats of death, abduction or other ill-treatment.¹¹ Their lawyers have also faced harassment and threats and are obstructed in their attempts to effectively represent their clients, in violation of the right to a fair trial pursuant to article 14 of the ICCPR, and contrary to the UN Basic Principles on the Role of Lawyers.¹² Victims who seek criminal investigations into their abduction and secret detention, or speak publicly about their experiences, also risk reprisals, as is illustrated by the recent abduction of Mohmadsalah Denilovich Masaev, shortly after he gave a newspaper interview about his previous secret detention.¹³

In its consideration of the periodic report of Russia, the Human Rights Committee should address as a matter of priority the serious human rights violations taking place in counter-terrorism operations in Chechnya and elsewhere in the North Caucasus; the lack of effective investigations into violations of human rights by military, security services or other state agents and impunity for these violations, and the obstruction of applications by the victims of such human rights violations to both Russian courts and the European Court of Human Rights.

Failure to investigate the Dubrovka Theatre and Beslan School sieges

⁷ Nizhny Novgorod Committee Against Torture, submission to Eminent Jurists Panel, <https://ejp.icj.org>

⁸ Memorial submission to the Eminent Jurist Panel, *op cit*.

⁹ Memorial – Demos submission to the Eminent Jurists Panel, *op cit*.

¹⁰ Submissions to Eminent Jurists Panel, Memorial, <https://ejp.icj.org>; CAT, Concluding Observations, *op cit*, para.12.

¹¹ Memorial and European Human Rights Advocacy Centre (EHRAC), Memorandum on Threats to Applicants to the ECtHR in cases from Chechnya, November 2006, Annex III to EHRAC written evidence to Eminent Jurists Panel, <http://ejp.icj.org>

¹² Principles 16 and 17. Eminent Jurists Panel on Terrorism, Counter-terrorism and Human Rights: Press Release, 1/02/2007, *Russia: Leading Jurists assess counter-terrorism measures and protection of human rights*.

¹³ OMCT, Case RUS 080808, Forced disappearance /Fear for safety.

The controversial law enforcement operations mounted in response to the two largest terrorist attacks, at the Dubrovskaya Theatre in Moscow in 2002 (the “Nordost” theatre siege), and at Beslan School No. 1 in 2004, have not yet been subject to thorough and independent investigation.

In the case of the Dubrovskaya Theatre siege, victims allege that the deaths of nearly 100 hostages during or shortly after the storming of the building, are attributable to the effects of the gas dispersed in the theatre by security forces, as well as the lack of sufficient emergency and medical attention in the immediate aftermath of the siege. In October 2003, the Moscow prosecutor’s office closed the investigation into the planning and conduct of the rescue operation, finding that the hostages died from a combination of factors, including stress, dehydration, prolonged forced immobility and oxygen deprivation, unrelated to the effects of the gas.¹⁴ No officials involved in the rescue operation have been prosecuted in relation to its planning or execution. For reasons of national security, the government has declined to provide victims, their relatives, medical personnel or the public with information on the nature of the gas used during the siege. Victims and their relatives have not been provided with access to documentation from the investigation. The need for a thorough and independent investigation into the siege, identified by this Committee in its Concluding Observations of 2003, has still not been met.¹⁵

The storming of School No.1 at Beslan, following the taking hostage of more than 1000 adults and children there in September 2004, led to the deaths of more than 300 people. Allegations that special forces initiated the final battle for control of the school, and contributed to the deaths of hostages, remain unresolved. A parliamentary investigation into the siege concluded that the hostage-takers were responsible for the death of the hostages. However two members of the committee of inquiry dissented from the inquiry’s findings, and stated that the final battle for the school had been instigated by grenades fired by the security forces.¹⁶ There have been no convictions of officials in relation to the siege. Three Russian police officers charged with criminal negligence in allowing the armed hostage-takers through a number of checkpoints and failing to prevent the attack on the school, went on trial in March 2006¹⁷ but were later granted an amnesty.¹⁸ One of the hostage-takers, reportedly the only one to survive, Nur-Pashi Kuayev, was convicted on a series of charges of terrorism and murder in May 2006.¹⁹

¹⁴ ECtHR, Statement of Facts, *Finogenov v Russia*, App no.18299/03.

¹⁵ Concluding Observation of the Human Rights Committee on the Russian Federation, CCPR/CO/79/RUS, 1 December 2003, Para.14.

¹⁶ Sunday Herald, *Beslan school siege inquiry “a cover up”*, 11 February 2007.

¹⁷ The Guardian, *Police on trial over Beslan massacre*, 16 March 2006.

¹⁸ Reuters, *Amnesty Granted to Beslan siege police*, 29 May 2007.

¹⁹ BBC news, *Beslan attacker jailed for life*, 26 May 2006. The conviction was upheld by the Supreme Court in December 2006. JURIST, *Russia Supreme Court upholds sentence for Beslan hostage-taker*, 26 December 2006, <http://jurist.law.pitt.edu/paperchase/2006/12/russia-supreme-court-upholds-sentence.php>

The Committee should raise particular questions concerning the counter-terrorism operations carried out at the Dubrovka theatre in Moscow in 2002, and at School No.1 in Beslan in 2004, the compliance of those operations with obligations under the Covenant to protect the right to life and freedom from cruel, inhuman or degrading treatment and the lack of effective and independent investigations into both incidents.

2. Harassment of lawyers and control of the legal profession

The ICJ has long been concerned at attempts by the Russian Government to harass and disrupt the work of lawyers who act as human rights defenders or represent persons perceived to be opponents of the Government.²⁰ Such harassment is contrary to the UN Basic Principles on the Role of Lawyers and the UN Declaration on Human Rights Defenders and may lead to violations of the right to a fair trial under Article 14 ICCPR, as has been recognised by this Committee.²¹ Lawyers who have faced harassment include the prominent human rights lawyer and ICJ Commissioner Karinna Moskalkenko, whom the Government has attempted to disbar on spurious grounds.²²

In this context, the ICJ is particularly concerned that a proposed new law, the *Law on Lawyers' Activity and the Bar in the Russian Federation* has the potential to seriously compromise the independence of the legal profession, violate the right to a fair trial, and facilitate the harassment and obstruction of lawyers who defend the rule of law and human rights. The new bill proposes that the State Registration Agency would have power to bring a court action to remove a lawyer's licence to practice, without the approval of the Chamber of Lawyers, if the Chamber of Lawyers either refuses its request to bring such an action, or fails to respond to it within one month. Furthermore, the bill would allow the State Registration Agency to obtain access to the legal files of lawyers, including that containing protected confidential information, under investigation, and to demand that they answer questions regarding any case in which they are involved. The bill would thereby seriously undermine the right of a client to communicate in confidence with his or her lawyer, an essential element of the right to a fair trial,²³ protected by Article 14 of the ICCPR as well as Article 22 of the UN Basic Principles on the Role of Lawyers.

The Human Rights Committee should address the problem of harassment of lawyers and attempts to impede or interfere with their defence of clients. In

²⁰ ICJ, *Attacks on Justice 2005, The Russian Federation*, www.icj.org; Special Rapporteur on the Independence of Judges and Lawyers *UN Expert calls for Renewed Efforts for a Comprehensive Judicial Reform in the Russian Federation*, 29/05/08.

²¹ Human Rights Committee, General Comment No.32, CCPR/C/GC/32, para.34. See also Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, especially article 12.

²² ICJ Press Releases, *Russian Federation: End Harassment of Leading Human Rights Lawyer*, 7 June 2007; *Russian Federation: Tax order threatens leading human rights organisation*, 31/07/2006; *Russian Federation, ICJ concerned over conviction of lawyer*, 19/04/2005, www.icj.org

²³ ECtHR, *S v Switzerland* App. no.12629/8

particular it should question the Government on the proposed law on lawyers' activities and the bar, and assess its compatibility with Article 14 of the ICCPR.

3. Harassment of human rights defenders

The extremism laws,²⁴ in conjunction with a new law on regulation of NGOs,²⁵ have provided the framework for increasing harassment and obstruction of the work of human rights defenders.²⁶ The definition of "extremism" in Russian law remains overly broad and susceptible to selective application and abuse, in violation of the principle of legality, despite the fact that it has been narrowed following amendments of 2007. As defined in the legislation, "extremism" includes many diverse acts, both violent and peaceful, ranging from forcible change of the foundations of the constitutional system, to incitement to social, racial, ethnic or religious discord, to publicising knowingly false accusations against officials, alleging that they have committed serious criminal acts.²⁷ The legislation allows for the suppression of organisations engaged in extremist activity, media outlets "spreading extremist materials" and demonstrations where extremist activity is not effectively suppressed by the organisers.²⁸ In parallel to these civil powers, the Criminal Code provides for offences including public appeals for extremist activity; and creating, organising or participating in an extremist community.²⁹

In practice, the extremism law has been used to target NGOs critical of Government policy, including in relation to human rights. Notably, criminal charges of extremism were brought against the director of the Russian-Chechen Friendship Society, Stanislav Dmitrievsky, regarding articles he had published critical of Government policy and military operations in Chechnya. Following his conviction, the organisation was closed down.³⁰ Criminal charges were also brought against the "Voice of Beslan" organisation for "slander of public officials" and "humiliating national pride" for a statement accusing President Putin of refusing to launch an independent investigation into the Beslan siege. The charges were later dropped.³¹ Such applications of the law lead to disproportionate interferences with freedom of expression and association, contrary to Articles 19 and 22 ICCPR.

²⁵ Federal Law of 10 January 2006, On enactment of amendments to some legislative acts of the Russian Federation.

²⁶ Eminent Jurists Panel Submissions, op cit, Sova Centre; Centre for the Development of Democracy and Human Rights.

²⁷ Sova Centre, *Anti-Extremism legislation, its use and misuse*, Alexander Verkhovsky, 5/7/2008, <http://xeno.sova-center.ru>

²⁸ Law on Counteraction of Extremist Activities, op cit, Articles 6-16.

²⁹ Russian Criminal Code, Article 280, Article 282.

³⁰ International Herald Tribune, *Russian rights activist convicted for Chechnya articles*, 3/02/2006; Human Rights First, *Russian Court Forces Closure of Russian-Chechen Friendship Society*, 23/01/2007.

³¹ ICJ e-bulletin on counter-terrorism and human rights, January 2008, www.icj.org; the charges were dismissed by the Pravoberezhny District Court of North Ossetia, ICJ e-bulletin, May 2008.

Increased Government powers to control and limit the activity of NGOs have also worked to erode rights of freedom of expression, freedom of association and assembly, in contravention of obligations under the articles 19, 21 and 22 of the ICCPR. The NGO law of 2006³² creates a new authority of oversight over NGOs with expanded powers to monitor and regulate their activity, in particular by requiring them to provide tax and financial information, and to submit other detailed information regarding their activities.³³ It introduces stringent registration procedures for both Russian and foreign NGOs operating in Russia.³⁴ The unclear grounds on which registration may be refused, as well as the intrusive nature of the interferences with the activity of NGOs permitted by the law, allow for arbitrary and disproportionate interferences with freedom of association.³⁵

A further cause for concern is a proposed law, introduced to the State Duma in December 2008, which would broaden the definitions of treason and espionage in the Russian Criminal Code.³⁶ The bill would define treason to include damaging the constitutional order, sovereignty, territorial and state integrity of Russia.³⁷ The bill would also expand the definition of espionage, to prohibit the passing of state secrets to foreign non-governmental organisations, as well as to foreign governments.³⁸ These expanded definitions have considerable potential to restrict the work of human rights defenders, in particular where they co-operate with international inter-governmental or non-governmental organisations, and would be likely to lead to arbitrary and disproportionate interferences with freedom of expression and association.

The Human Rights Committee should address the impact of the extremism and NGOs laws on freedom of expression, assembly and association of human rights defenders pursuant to article 19, 21 and 22 of the ICCPR. It should also consider the potential of the proposed new definitions of treason and espionage, to restrict these rights.

³² Federal Law No.18-03 of 10 January 2006, On enactment of amendments to some legislative acts of the Russian Federation, amending Federal Law No, 3297-1 of July 14, 1992, On Closed Administrative Territorial Formations.

³³ Ibid, Article 1 amending Article 38 of the 1992 law.

³⁴ Ibid, Article 2 amending Article 21 of the Amending Article 21 of the 1992 law; Article 3 amending Article 13 1992 law.

³⁵ Article 22 ICCPR; CAT Concluding Observations on the Russian Federation, op cit, para.21; UN Special Representative on Human Rights Defenders, Report to the General Assembly A/HRC/7/28/ADD.1, 3/3/2008, paras.1722-1725.

³⁶ Bill *On modification of separate legislative acts of the Russian Federation concerning counter-terrorism*; www.hro1.org, *Russian Duma set to extend "spying" articles in the criminal code*, 17 December 2008.

³⁷ Ibid, Article 275

³⁸ Ibid, Article 276

4. Transfer of suspects to Member States of the Shanghi Co-operation Organisation

The ICJ is particularly concerned at the consequences of Russian co-operation with other CIS countries, within the framework of the Shanghi Co-operation Organisation, established in 2001, and including Kazakhstan, China, Kyrgyzstan, Tajikistan and Uzbekistan, as well as the Russian Federation. The Organisation and its Conventions have provided the framework for increased co-operation between law enforcement and intelligence services of Member States, often in contravention of human rights obligations and the rule of law, including the absolute prohibition on *refoulement* to face a real risk of torture or other serious violation of human rights. The Shanghai Convention on Combating Terrorism, Separatism and Extremism of 2001 requires Member States to exchange information, develop joint legal frameworks and share “practical assistance” including through extradition of suspects.³⁹ Given the widespread and systematic violations of human rights in several of the States Party to the Convention, the ICJ is concerned at the many extraditions and informal transfers from Russia to other States Party to the Shanghi Convention. Such transfers, some of which rely on diplomatic assurances against torture from states where torture is widespread or systematic, violate the obligation of *non-refoulement*.⁴⁰

Particularly problematic are returns to Uzbekistan of individuals wanted in connection with the Andijan protests of 2005. The European Court of Human Rights has held such transfers in violation of Russia’s obligation of *non-refoulement*, finding that diplomatic assurances were insufficient to protect against torture or ill-treatment following return to Uzbekistan.⁴¹ Nevertheless, many such transfers have been carried out, some following expedited extradition proceedings, others following kidnappings or disappearances and extra-legal transfer, apparently with the involvement of both foreign intelligence services and Russian authorities.⁴² In several cases, suspects whose extradition had been refused have shortly afterwards been abducted and transferred,⁴³ or transferred following immigration expulsion orders of dubious legality.⁴⁴ On at least one occasion a transfer has been made in defiance of interim measures prescribed by the ECtHR.⁴⁵

³⁹ See further, Declaration of Heads of Member States of Shanghai Cooperation Organisation, section III, 05.07.2005.

⁴⁰ Article 7 ICCPR, General Comment No.20, 10/3/92, para.9

⁴¹ *Ismoilov v Russia*, App. no. 2947/06; *Ryabikin v Russia*, App No.8320/04.

⁴² Elena Ryabinina, Civic Assistance Committee, *Agreements of the SCO as the “legal” basis for the extradition of political refugees*, August 2008 <http://www.hro1.org/node/2933>.

⁴³ ECHR communicated case *Iskandarov v Russia*, App. No.171854/05, 4/6/2008.

⁴⁴ *Muminov v Russia*, App. No.42502/06, where the applicant was transferred on foot of an expulsion order which subsequent to his expulsion was overturned by an appeal court; ECHR communicated case *Kamaliyev and Kamaliyeva v. Russia*, App. No. 52812/07, Statement of facts, 9/6/2008, where the applicant was transferred on an expulsion order following a court hearing at which neither the applicant nor his lawyer were present.

⁴⁵ *Kamaliyev* case, op cit; In *Muminov v Russia*, op cit, the applicant was removed despite interim measures under Rule 39, but the ECtHR found that there was insufficient information to establish that the authorities

The Committee should question the Government on the legality of transfers to Member States of the Shanghai Co-operation Organisation, and their compliance with rights to liberty and security, as well as the right to *non-refoulement* to face a real risk of torture, cruel, inhuman or degrading treatment or other serious violation of human rights.

4. Cooperation with United Nations human rights mechanisms

The ICJ is concerned at the number of outstanding requests for visits by the special procedures of the Human Rights Council,⁴⁶ as well as the refusal to allow the Special Rapporteur on Torture to visit the North Caucasus during his 2006 visit.⁴⁷ **The Committee should address the inadequate co-operation with UN special procedures, in particular the lack of positive responses to requests for visits by Special Procedures with special relevance to the Chechen conflict.**

knew of the Rule 39 measure before the applicant was removed from the jurisdiction, and therefore found no violation of Article 34 ECHR.

⁴⁶ Including: Special Representative of the Secretary General on Human Rights Defenders, request of 2004, Special Rapporteur on the right to freedom of opinion, request of 2002, Special Rapporteur on Summary executions, request of 2000, repeated in 2003, 2004 and 2005; Special Rapporteur on Torture or other Cruel, Inhuman or Degrading Treatment or Punishment (in respect of Chechnya) request of 2000.

⁴⁷ Tanya Lockshina, Submission to Eminent Jurists Panel, *op cit*; Special Rapporteur on Torture, *Addendum: Follow-up to recommendations*, A/HRC/7/3/Add.2. para.535.