



United Nations Human Rights Council
4th Session of the Working Group on Universal Periodic Review, 2-13 February 2009
ICJ Submission to the Universal Periodic Review of the Russian Federation

September 2008

The International Commission of Jurists (ICJ) welcomes this opportunity to present its submission to the Universal Periodic Review (UPR) of the Russian Federation. The Working Group on the UPR and the Council should address as a matter of priority the serious violations of human rights, including extra-judicial killings, disappearances, arbitrary, including secret, detention, and torture and other ill-treatment taking place in the context of Russian counter-terrorism operations, in particular in Chechnya, and the widespread impunity for these acts. It is also important that the UPR addresses the wide powers to suppress terrorism and extremism, which together with laws regulating NGOs have led to unjustified interferences with freedom of expression, association and assembly; the continuing attempts to erode the independence of the judiciary and lawyers; counter-terrorism and counter-extremism co-operation with Member States of the Shanghai Co-operation Organisation, leading to breach of the obligation of *non-refoulement* in respect of those who face a real risk of torture or other serious violations of human rights; and lack of cooperation with the UN human rights mechanisms, including the special procedures of the Human Rights Council.

1. Impunity for Gross Violations of Human Rights

Practices of arbitrary, including secret, detentions, torture and cruel, inhuman or degrading treatment, and disappearances continue to be widespread in Chechnya, despite the diminishing intensity of the conflict, in contravention of Russia's international legal obligations, including under the International Covenant on Civil and Political Rights (ICCPR), the Convention Against Torture (CAT), the European Convention on Human Rights (ECHR) and customary international law. There are numerous reliable and consistent reports of arbitrary or secret detentions, extra-judicial executions, as well as 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 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.

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 Russia's international human rights obligations to investigate, prosecute and provide reparations for violations of human

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.

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,² arbitrary killing,³ or disappearance⁴ 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.⁵ 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 appeal.⁶ Where the suspension is found to be unlawful, often, the investigation will be briefly re-opened, and then suspended again.⁷ 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 rights⁸ are exacerbated by lack of judicial independence, in particular in Chechnya, where conviction of state agents may place judges in danger, as well as affecting their security of tenure.⁹

Outside of Chechnya, the two largest and most notorious terrorist attacks, at Beslan school No. 1 and at the Dubrovka Theatre in Moscow (the "Nordost" theatre siege), where controversial law enforcement operations were mounted and allegedly contributed to loss of life, have been subject to only very inadequate investigation. Important information and documents have been withheld from victims and families. The victims of the Dubrovka theatre siege have been denied information on the nature of the gas used during the operation, on grounds of national security.¹⁰

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, and contrary to the UN Basic Principles on the Role of Lawyers.¹² Victims who seek criminal

² *Chitayev and Chitayev v Russia*, op cit, para.165.

³ *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.

⁴ *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.

⁵ *Bazorkina v Russia*, para121- 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.

⁶ Nizhny Novogorod Committee Against Torture, submission to Eminent Jurists Panel, <https://ejp.icj.org>

⁷ Memorial submission to the Eminent Jurist Panel, op cit.

⁸ Memorial – Demos submission to the Eminent Jurists Panel, op cit.

⁹ Submissions to Eminent Jurists Panel, Memorial, <https://ejp.icj.org>; CAT, Concluding Observations, *op cit*, para.12. This situation is in contravention of the UN Basic Principles on the Independence of the Judiciary, Principles 1, 2, 11 and 12.

¹⁰ ECtHR, Statement of Facts, *Finogenov v Russia*, App no.18299/03.

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*.

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

The Working Group should recommend that the Human Rights Council urge the Government:

- **To review counter-terrorism laws, policy and practice with a view to compliance with international standards, and take steps to end violations of human rights in counter-terrorism operations by all security forces, including those active in Chechnya under the control of President Kadyrov;**
- **To take immediate steps to remove barriers to effective investigations of allegations of serious human rights violations by military, security services or other state agents, to ensure that investigations in such cases are pursued diligently, that victims and family members are informed and involved and that criminal prosecutions are instigated where so justified, with sanctions commensurate with the gravity of human rights violations;**
- **To cease and take active measures to prevent obstruction of applications to the domestic courts or the European Court of Human Rights, including threats or violence against victims, their families and their legal representatives;**
- **To prevent interference with and take measures to reinforce judicial independence in cases involving allegations of human rights violations, in particular in Chechnya.**

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 opponents of the Government.¹⁴ Such harassment is contrary to the UN Basic Principles on the Role of Lawyers and the UN Declaration on Human Rights Defenders and leads to violations of the right to a fair trial.¹⁵ Lawyers who have faced harassment include the prominent human rights lawyer and ICJ Commissioner Karinna Moskalenko, whom the Government has attempted to disbar on spurious grounds.¹⁶

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 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

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

¹⁴ 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.

¹⁵ Article 14 ICCPR, 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.

¹⁶ 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

of the right to a fair trial,¹⁷ protected by Article 14 of the ICCPR as well as Article 22 of the UN Basic Principles on the Role of Lawyers. **The ICJ calls on the Working Group to recommend to the Council that the Government withdraw the proposed Law on Lawyers' Activities and the Bar; and cease all harassment of and interference with the work of lawyers, and identification of lawyers with clients, in accordance with international law and standards.**

3. Extremism and NGO laws

The extremism laws,¹⁸ in conjunction with a new law on regulation of NGOs,¹⁹ have provided the framework for increasing harassment and obstruction of the work of human rights defenders.²⁰ 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. "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.²¹ 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.²² 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.²³

In practice, the extremism law has been used to target NGOs critical of the 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.²⁴ 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 battle ending the siege that killed many hostages; the charges were later dropped.²⁵

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 ICCPR and the European Convention on Human Rights. The NGO law of 2006²⁶ creates a new authority of oversight over NGOs with expanded powers to monitor and regulate their activity, in

¹⁷ ECtHR, *S v Switzerland* App. no.12629/8

¹⁸ Federal Law on Counteraction of Extremist Activities, No.114 FZ July 2002, as amended 2006 & 2007.

¹⁹ Federal Law of 10 January 2006, On enactment of amendments to some legislative acts of the Russian Federation.

²⁰ Eminent Jurists Panel Submissions, op cit, Sova Centre; Centre for the Development of Democracy and Human Rights.

²¹ Sova Centre, *Anti-Extremism legislation, its use and misuse*, Alexander Verkhovskiy, 5/7/2008, <http://xeno.sova-center.ru>

²² Law on Counteraction of Extremist Activities, op cit, Articles 6-16.

²³ Russian Criminal Code, Article 280, Article 282.

²⁴ 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.

²⁵ 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.

²⁶ 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.

particular by requiring them to provide tax and financial information, and to submit other detailed information regarding their activities.²⁷ It introduces stringent registration procedures for both Russian and foreign NGOs operating in Russia.²⁸ The unclear terms 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 rights to freedom of association.²⁹ **The Working Group should recommend that the Human Rights Council call on the Government to refrain from the harassment of human rights defenders; respect their rights to freedom of expression, association and assembly; and review the extremism and NGO laws to ensure their compatibility with international human rights obligations and standards including the UN Declaration on Human Rights Defenders.**

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

The ICJ is particularly concerned at the consequences of Russian co-operation with other CIS countries, within the framework of the Shanghai 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 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.³⁰ 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 Shanghai Convention. Such transfers, which sometimes rely on diplomatic assurances against torture from states where torture is widespread or systematic, violate the obligation of *non-refoulement*. 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.³¹ Nevertheless, many such transfers have been made, 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.³² In several cases, suspects whose extradition has been refused have shortly afterwards been abducted and transferred.³³ On two occasions, transfers have been made in defiance of interim measures prescribed by the ECtHR.³⁴ **The Working Group should recommend that the Human**

²⁷ Ibid, Article 1 amending Article 38 of the 1992 law.

²⁸ Ibid, Article 2 amending Article 21 of the Amending Article 21 of the 1992 law; Article 3 amending Article 13 1992 law.

²⁹ 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.

³⁰ See further, Declaration of Heads of Member States of Shanghai Cooperation Organisation, section III, 05.07.2005.

³¹ *Ismoilov v Russia*, App. no. 2947/06; *Ryabikin v Russia*, App No.8320/04.

³² 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>.

³³ Abdugani Kamaliyev, expelled on 5 December 2007 to Uzbekistan despite interim measures by the ECtHR forbidding his transfer: ECHR communicated case *Kamaliyev and Kamaliyeva v. Russia*, App. No. 52812/07, Statement of facts, 9/6/2008; ECHR communicated case *Iskandarov v Russia*, App. No.171854/05, 4/6/2008; Rustam Muminov case: Human Rights Watch, *Russia Deports Uzbek Asylum Seeker despite torture ban*, 25 October 2006.

³⁴ *Iskandarov* case, op cit; See also the *Muminov*, and *Kamaliyev* cases, above f.n.34.

Rights Council call on the government to respect the principle of *non-refoulement*; cease reliance on diplomatic assurances against torture and other ill-treatment in extradition or other transfers to all countries, including those within the Shanghi Co-operation Organisation; comply with all interim measures of the ECtHR and other judicial or quasi-judicial international bodies; protect against violations of human rights by foreign intelligence agents acting on Russian territory and ensure that co-operation with other Shanghi Member States takes place in full accordance with its obligations under international human rights and international humanitarian law.

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,³⁵ the refusal to allow the Special Rapporteur on Torture to visit the North Caucuses during his 2006 visit,³⁶ delays in reporting and a lack of implementation of the concluding observations and recommendations by the treaty bodies.³⁷ **The Working Group should recommend to the Council that the Government provide for immediate visits by the Special Rapporteur on extra-judicial, summary or arbitrary executions and the Special Representative on human rights defenders, and by the Special Rapporteur on Torture and other Cruel, Inhuman and Degrading Treatment or Punishment to Chechnya and the North Caucuses; grant them unhindered access within the country; and otherwise cooperate in accordance with the Terms of Reference for the Special Procedures mandate-holders; and that it submit its outstanding reports on the implementation of its international human rights treaty obligations; and comply with the treaty bodies' recommendations and views on the communications alleging violations in individual situations.**

³⁵ 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.

³⁶ 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.

³⁷ See for example Concluding Observations of the Committee on the Rights of the Child, CRC/C/RUS/CO/3, 23/11/2007, para.7; Concluding Observations of the Human Rights Committee, CCPR/CO/79/RUS, 1/12/2003, para.2.