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**ALTERNATIVE REPORT OF THE INTERNATIONAL COMMISSION OF JURISTS (ICJ)
TO THE UN COMMITTEE AGAINST TORTURE ON THE FIFTH PERIODIC REPORT OF THE
RUSSIAN FEDERATION UNDER THE CONVENTION AGAINST TORTURE AND OTHER
CRUEL, INHUMAN OR DEGRADING TREATMENT OF PUNISHMENT**

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Composed of 60 eminent judges and lawyers from all regions of the world, the International Commission of Jurists promotes and protects human rights through the Rule of Law, by using its unique legal expertise to develop and strengthen national and international justice systems. Established in 1952, in consultative status with the Economic and Social Council since 1957, and active on the five continents, the ICJ aims to ensure the progressive development and effective implementation of international human rights and international humanitarian law; secure the realization of civil, cultural, economic, political and social rights; safeguard the separation of powers; and guarantee the independence of the judiciary and legal profession.

ICJ ALTERNATIVE REPORT TO THE COMMITTEE AGAINST TORTURE ON THE FIFTH PERIODIC REPORT OF THE RUSSIAN FEDERATION

1. The International Commission of Jurists (ICJ) welcomes the opportunity to provide its views to the Committee against Torture (the Committee) for the consideration of the Fifth Periodic Report of the Russian Federation. In this submission, the ICJ highlights several issues which it considers should be of particular concern to the Committee. In particular, the ICJ is concerned about the widespread practice of torture and other ill-treatment in detention, especially in pre-trial detention facilities, and impunity for torture and ill-treatment, particularly in the North Caucasus. The ICJ also raises concerns about the transfer of suspects to member States of the Shanghai Cooperation Organisation, in violation of the principle of *non-refoulement*, and the failure of the Russian Federation to cooperate with the UN mechanisms, especially with regard to visits by the Special Procedures.

ICJ ALTERNATIVE REPORT

Articles 1 and 4: Definition of Torture in National Law

2. Article 4 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT, or the Convention) places an obligation on States Parties to ensure that all acts of torture, as defined in Article 1 of the Convention, as well as attempts to commit torture, and complicity or participation in torture, are offences under its criminal law. These obligations require that the definition of the crime of torture accords with the definition in Article 1 of the CAT, and that the crime of torture is not subject to a statute of limitations. National law must also provide for appropriate penalties for crimes of torture (Article 4(2)).¹

3. Although a definition of torture has been introduced into the Russian Criminal Code, torture has not yet been effectively transformed into a criminal offence in practice or, arguably, in law. The definition of torture has been introduced as a note to Article 117 of the Criminal Code, rather than as a separate article of the Criminal Code itself and the usage and status of this "note" is unclear.

4. The title of Article 117 itself does not correspond to the word "torture". In the Russian language version of the Convention, the word torture is translated as "пытка". The term used in Article 117 is instead "истязание", which can be roughly translated as "excruciation". Furthermore, as noted in the preceding paragraph of this submission, the definition of "torture" is only provided by way of a note to Article 117. In practice, therefore, the high number of prosecutions under Article 117 does not necessarily mean that all, or any, of those cases have been brought for the crime of torture as defined in Articles 1 and 4 of the CAT.

5. As this Committee has previously found, the current definition of torture in the Criminal Code does not fully reflect all elements of the definition enshrined in Article 1 of the Convention,² and, in particular, does not criminalise as torture acts aimed at coercing a third person.³

6. A further concern is that, under Article 78 of the Russian Criminal Code, offences including torture carry a limitation period of 10 years. This is contrary to the principle, consistently confirmed by this Committee, that torture, as a crime under international law and a norm of *jus cogens*, must not be subject to a statute of limitations.⁴

7. Neither the note to Article 117 nor Article 302 (coercion to testify) of the Criminal Code contains a definition of "perpetrator". The offence of torture is therefore applicable to all persons and applies to acts of private individuals as well as State agents or anyone acting in an official capacity or *ultra vires*. The application of the criminal offence is therefore in principle wider than

¹ Conclusions and Recommendations of the Committee against Torture, Jordan, CAT/C/JOR/CO/2, 25 May 2012, para. 9; Conclusions and Recommendations of the Committee against Torture, Kuwait, CAT/C/KWT/CO/2, 28 June 2011, para 7. Conclusions and Recommendations of the Committee against Torture, Bosnia and Herzegovina, CAT/C/BIH/CO/2-5, 20 January 2011, para 8.

² Concluding Observations of the Committee against Torture, Russian Federation, UN Doc. CAT/C/R/CO/4, para 7.

³ *Ibid.*

⁴ Conclusions and Recommendations of the Committee against Torture, Finland, CAT/C/FIN/CO/5-6, 29 June 2011, para 7; Conclusions and Recommendations of the Committee against Torture, Turkmenistan, CAT/C/TKM/CO/1, 15 June 2011, para 8; Conclusions and Recommendations of the Committee against Torture, Jordan, CAT/C/JOR/CO/2, 25 May 2010, para. 9; See also: ICTY, Case of *Prosecutor v. Furundzija*, Judgment of 10 December 1998, No. IT-95-17/1-T10, paragraphs 155-157.

that prescribed under the CAT. In practice, however, the note to Article 117 is rarely if ever applied to prosecute State officials such as police officers for crimes of torture. This practice is supported by the principle of national law established in Article 17(3) of the Criminal Code, which provides: "[i]f a crime is provided for by general and special norms, there is no cumulative crime and criminal responsibility is applied according to the special norm".⁵

8. This means that, in practice, where an official such as a police officer commits acts falling within the definition of torture (as provided for under the note to Article 117 of the Criminal Code), the conduct will often be prosecuted under Article 286 (abuse of power), Articles 111-113 (international infliction of injuries), Article 302 (coercion to give testimony) or other provisions.⁶ In these cases, not only will the sentence imposed be significantly lighter than for the crime of torture, but the offence itself will not be qualified as torture. It is also significant that, where crimes of torture are prosecuted under other articles of the Criminal Code, they are subject to shorter statutes of limitations under Article 78 of the Criminal Code, which imposes varying limitation periods depending on the gravity of the crime committed.

9. In the view of the ICJ, the practice of prosecuting crimes of torture as lesser or different offences under the Criminal Code marginalises the offence of torture and thereby raises concerns as to compliance with Article 4 of the CAT. The practice contradicts the statement of the Russian Federation that the introduction of the definition of torture "...brought legal certainty with respect to the categorization of the aforementioned unlawful acts in cases involving the use of torture, and its content is in compliance with article 1 of the Convention".⁷

Articles 2, 10 and 11 Prevention of Torture and Ill-treatment

10. Consistent and reliable reports indicate that the ill-treatment of detainees by law enforcement personnel⁸ remains widespread and has not substantially decreased since the Committee's previous Concluding Observations on the Russian Federation.⁹ It is indicative of the systemic nature of the problem that cases alleging torture or other ill-treatment make up 15 per cent of all the complaints against Russia before the European Court of Human Rights. Since complaints against Russia amount to more than a quarter of all the caseload of the Court,¹⁰ this means that Russia currently has the greatest number of torture complaints in absolute terms of any State Party to the European Convention on Human Rights (ECHR).¹¹ The European Court has found more violations of the prohibition on torture and other forms of ill-treatment by the Russian Federation than by any other State Party to the ECHR since 1959, despite the fact that the Russian Federation ratified the Convention only in 1998, and the first case concerning Russia was decided only in 2002.¹²

11. Amongst recent cases pointing to the systemic use of torture and other ill-treatment in pre-trial detention are:

⁵ Russian Federation Criminal Code, Article 17(3).

⁶ E.g. see the Russian Federation Supreme Court decision of 18 July 2012 to resume Sergei Shishkin case against 10 police officers whose actions were found to be torture by European Court of Human Rights and who were tried under art. 286: Parvo.Ru, *Supreme Court resumed a torture case with the punishment softer than soft*, <http://pravo.ru/news/view/75213/>.

⁷ Fifth periodic report of the Russian Federation on the observance of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, CAT/C/RUS/5, 28 February 2011.

⁸ Cases finding a breach of Article 3 ECHR (prohibition of torture or inhumane or degrading treatment) over the period between 1959 until 2011, most cases concerned the Russian Federation in absolute numbers and making up slightly more than a third of all cases. European Court of Human Rights Statistics, Violation by Article and by State 1959 - 2011, <http://www.echr.coe.int/ECHR/EN/Header/Reports+and+Statistics/Statistics/Statistical+data>; Amnesty International Report, "The Circle of Injustice, Security Operations and Human Rights Violations in Ingushetia", 2012, p. 39.

⁹ Concluding Observations of the Committee against Torture, Russian Federation, UN Doc. CAT/C/R/CO/4, para 9 (a).

¹⁰ Analysis of Statistics 2011, published January 2011, http://www.echr.coe.int/NR/rdonlyres/11CE0BB3-9386-48DC-B012-AB2C046FEC7C/0/STATS_EN_2011.PDF, p. 8.

¹¹ Statistics on judgments by state, http://www.echr.coe.int/NR/rdonlyres/E6B7605E-6D3C-4E85-A84D-6DD59C69F212/0/Graphique_violation_en.pdf, p. 6.

¹² Overview 1959-2011, http://www.echr.coe.int/NR/rdonlyres/E58E405A-71CF-4863-91EE-779C34FD18B2/0/APERCU_19592011_EN.pdf, p. 7; Status of Ratification, Reservations and Declarations of the ECHR by the Russian Federation: <http://conventions.coe.int/Treaty/Commun/ListeDeclarations.asp?NT=005&CM=8&DF=&CL=ENG&VL=1> See further, Russian Justice Initiative, <http://www.srji.org/en/echr/russia/>

- The case of Dmitry Krutov, who on 12 February 2012 was taken to a police department, severely beaten and then allowed to go home. The following day he was taken to hospital where he entered into a coma, having suffered internal injuries and blood loss. An investigation has been conducted and the case was forwarded to the court in September 2012.
- The case of Sergei Shishkin, who was severely beaten and had his hand and toenails pulled out.¹³ The Government's explanation, relying on a forensic investigation, was that the loss of Sergei Shishkin's nails was caused by a fungal infection and that the bruises must have been self-inflicted, as they had been located in places on his body accessible to the applicant's own hand.¹⁴ In June 2012, the European Court ruled in this case and found a violation of Article 3 of the ECHR.
- The case of Sergey Nazarov, who died in police custody in March 2012 in the central Russian Republic of Tatarstan and who alleged before his death that officers had tortured him, including by sodomizing him with a bottle.¹⁵ Two out of several police officers involved in the case have been charged with abuse of power¹⁶ and recently convicted and sentenced respectively to two and two-and-a-half years of imprisonment.¹⁷

12. Torture and ill-treatment of detainees is perpetuated by the inadequacy of safeguards essential to the obligation of prevention under Article 2 of the CAT, including prompt access to independent legal assistance, contact with relatives, and judicial review of pre-trial detention.¹⁸ Formal safeguards under Russian law are not always respected in practice and have proven to be insufficient to prevent torture and ill-treatment by officials.¹⁹

Access to a lawyer

13. The choice of a lawyer for persons in detention is guaranteed by Article 50 of the Criminal Procedure Code (CPC). If the lawyer of choice is unable to meet with the individual within 24 hours of their being detained as a suspect in a criminal case, or as a person formally charged with an offence, the authorities are required to take steps to appoint a lawyer to represent the individual (Article 50(4) of the CPC). In practice, in cases where a person requests a lawyer while being detained, such requests may be denied and further pressure placed on detainees to "confess" to guilt.²⁰ In addition, when a lawyer is searching for a client, the responsible bodies sometimes mislead the lawyer as to the client's whereabouts.²¹

14. Lawyers have faced harassment and threats as well as obstruction in their attempts to effectively represent their clients, especially in the North Caucasus.²² Such harassment inhibits

¹³ *Buntov v Russia*, App No. 27026/10, para 16-23.

¹⁴ *Ibid*, para 46.

¹⁵ "Russia Police 'Sodomized Custody Death Man with Bottle'", *Ria Novosti*, March 12, 2012 <http://en.rian.ru/russia/20120312/172114836.html>.

¹⁶ The Investigative Committee of the Russian Federation website: Kommersant: Tatar human rights activists approved of anti-torture investigations, http://en.sledcom.ru/smi/119254/?sphrase_id=148255.

¹⁷ Kommersant N 180(4965) 26.09.2012, *Did not torture but were convicted*, <http://www.kommersant.ru/doc/2030316>.

¹⁸ Committee against Torture, *General Comment no. 2: Implementation of Article 2 by State Parties*, 24 January 2008, UN Doc. CAT/C/GC/2, paragraph 13 (our emphasis). See also, *inter alia*, *Concluding Observations of the Committee against Torture: Hungary*, UN Doc. CAT A/54/44 (1999), paragraph 84; and *Concluding Observations of the Committee against Torture: Cameroon*, 5 February 2004, UN Doc. CAT/C/CR/31/6, paragraph 9(a). Human Rights Committee, *General Comment 20*, Prohibition of torture and cruel treatment or punishment, para.11; *Concluding Observations of the Human Rights Committee: Israel*, UN Doc. CCPR/CO/78/ISR, paragraph 13; *Concluding Observations of the Human Rights Committee: Switzerland*, UN Doc. CCPR/C/79/Add.70, paragraph 26; Views of 27 July 1993, *Communication no. 326/1988, Case of Henry Kalenga vs. Zambia*, UN Doc. CCPR/C/48/D/326/1988, paragraph 6.3.

¹⁹ Amnesty International Report, "The Circle of Injustice, Security Operations and Human Rights Violations in Ingushetia", 2012, pp. 41-43.

²⁰ E.g.: *Nechto v Russia*, App. No. 24893/05, para. 105; *Vanfuli v Russia*, App. No. 24885/05, para. 97.

²¹ E.g.: *Lopata v Russia*, App. No. 72250/01, para. 137.

²² ICJ, Lawyer killed in Dagestan: the ICJ calls for full and independent investigation, 23 January 2012, http://documents.icj.org/Sagidmagomedov_PR_ENG.pdf; Russian Federation: ICJ urges the Russian Authorities to Investigate an Attack against Lawyer, 19 May 2011, <http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2012/06/Russian-Federation-Russian-authorities-investigate-an-attack-against-lawyer-press-release-2011-eng.pdf>; Russian Federation: ICJ Observes hearing in prosecution of Dagestan lawyer, 29 November 2009, <http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2010/11/Russia-lawyertrial-news-2010.pdf>; Human Rights Watch, Russia: Protect Human Rights Lawyer, 9 June 2012, <http://www.hrw.org/news/2012/06/09/russia-protect-human-rights-lawyer>.

lawyers from effectively protecting their clients in detention against ill-treatment, and is contrary to the UN Basic Principles on the Role of Lawyers.²³

Information provided to the family of the detainee

15. Article 96 of the CPC states that relatives of a detained person must be informed of the fact of detention within 12 hours of detention.²⁴ Article 94(4) of the CPC allows for the restriction of access to relatives of suspects in the interest of the secrecy of the investigation. This facilitates ill-treatment during the first period after apprehension, as during that time individuals can be held and information can be extracted without witnesses or lawyers.²⁵

16. In practice, particularly in the North Caucasus but also in other parts of Russia, relatives are often not informed of the place of detention of their relative. Detainees may also be moved between different detention facilities without authorities informing the family. An example of this is the case of Zelimkhan Chitigov, an ethnic Chechen, who was abducted by law enforcement officials. His whereabouts were unknown to his relatives for several days.²⁶ Zelimkhan Chitigov, who alleges that he was tortured to admit guilt to a crime he had not committed, was later taken to hospital where he was found to have severe injuries.²⁷

Judicial review of detention

17. Despite safeguards established in the CPC to prevent violations of the rights of detained persons, judicial review of detention remains ineffective. Safeguards include the right of a detained person to be released within 48 hours of arrest unless he or she is remanded in custody or the initial period of detention is extended by a court.²⁸ In cases of unlawful detention, however, it is not always possible to obtain a speedy review of detention, even where no objective obstacles exist for such a speedy review.²⁹

18. Pre-trial detention, authorised by the courts, continues to be the norm, despite various alternatives to detention enshrined in law.³⁰ Overreliance by the courts on pre-trial detention creates conditions for ill-treatment of detainees and contributes to poor detention conditions.³¹

Article 12: Impunity for Torture and Ill-treatment

19. Despite criminalisation of torture, impunity for crimes of torture still prevails in the Russian Federation as a whole and in the North Caucasus in particular,³² in violation of obligations under international human rights law including Article 12 of the CAT.³³

²³ Basic Principles on the Role of Lawyers, Principles 16 and 17.

²⁴ RF CPC, Article 96.

²⁵ Amnesty International Report, "The Circle of Injustice, Security Operations and Human Rights Violations in Ingushetia", 2012, p. 43.

²⁶ HRC Memorial, "Ingushetia: An Abducted Local Resident is Being Charged with Carrying Weapons: Relatives claim that his Confession was Obtained by Beatings and Torture" 29 June 2010, <http://www.memo.ru/eng/news/2010/06/29/2906102.html>.

²⁷ *Ibid.*

²⁸ RF CPC, Article 94(2).

²⁹ E.g., *Alikhonov v Russia*, ECtHR, App. no. 35692/11.

³⁰ Preventive measures are enshrined in Chapter 13 (Measures of Restrictions) of the Criminal Procedure Code of the Russian Federation and they include as listed in Article 98 CPC: recognizance not to leave (Article 102 CPC); personal guarantee (Article 103 CPC); surveillance by the command of the military unit (Article 104 CPC); keeping an eye on a minor accused (Article 105 CPC); bail (Article 106 CPC); home arrest (Article 107 CPC); taking into custody (Article 108 CPC).

³¹ *Nitsov v Russia*, ECtHR, App. No 35389/04, para 56ff.; *Gushchin v Russia*, ECtHR, App. on no. 7480/07; *Markov v Russia*, ECtHR, App. no. 12297/06.

³² Parliamentary Assembly of the Council of Europe, Report by the Committee on Legal Affairs and Human Rights, "Implementation of judgments of the European Court of Human Rights", Doc. 12455, December 20, 2010, para 212; Amnesty International Report, "The Circle of Injustice, Security Operations and Human Rights Violations in Ingushetia", 2012, p. 55. These findings were already reflected at the Moscow hearing of the ICJ Eminent Jurists Panel, (Nizhny Novgorod Committee Against Torture, submission to Eminent Jurists Panel; 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 and conversation with Memorial, June 2009, all available on <https://ejp.icj.org>).

³³ The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has recently again expressed concerns regarding the prevalence of impunity as one of the root causes for the widespread practice of torture. Furthermore, he voiced disappointment with respect to the low number of

20. In Chechnya and the North Caucasus, despite increased stability, practices of torture and ill-treatment as well as enforced disappearances continue to be widespread,³⁴ and are perpetuated by the failure of the criminal justice system to impose accountability for these crimes. In the last two years, out of 427 complaints to the Investigation Committee of the Chechen Republic related to enforced disappearances, not a single case was transferred to the court following an investigation.³⁵ A recent publication by Memorial, *Fate Unknown*, contains disturbing accounts of 384 cases of arrests by law enforcement agents following which persons either “disappeared” or were found dead, and 107 cases of suspected enforced disappearance in the period of 1999-2000.³⁶ None of these cases reached court and no suspects faced charges in relation to the alleged crimes.³⁷ Indeed, there have only been a handful of convictions of senior officials for crimes involving acts of torture and other ill-treatment in the North Caucasus, including violations that constitute crimes under international law.³⁸ Cases like that of Zelimkhan Chitigov, involving allegations of severe human rights violations, including alleged enforced disappearance, secret detention and torture, have not been effectively investigated to date.³⁹ This is the first case in Ingushetia where police officers charged with torture face criminal prosecution⁴⁰ and yet the prosecution is encountering serious difficulties.⁴¹

21. Two of the largest and most notorious terrorist attacks, at Beslan school No. 1 and at the Dubrovka Theatre in Moscow (the “Nordost” theatre siege), involved controversial law enforcement operations that contributed to loss of life.⁴² These operations have been the subject of highly inadequate investigation and important information and documents have been withheld from victims and families, including information on the nature of the gas used during the operations, on grounds of national security.⁴³ Ten years after the attacks at the Dubrovka Theatre, due to the continuously suspended proceedings, victims are still seeking justice through initiation of a new criminal case.⁴⁴

22. In 2011, a joint urgent appeal was sent to the Government of the Russian Federation with regard to the allegations of a pattern of impunity for the death of lawyers and human rights defenders, including Sergei Magnitsky, who died in custody in 2009. The Russian Government argued that the death of Sergei Magnitsky was due to natural causes.⁴⁵ It is notable that the Special Rapporteur on torture has taken the view that States can overcome the presumption of State responsibility for a death resulting from injuries sustained in custody by making sure that there is a “thorough, prompt and impartial investigation of all suspected cases for extra-legal, arbitrary and summary executions, including cases were complaints by relatives or other reliable

prosecutions for such crimes. Special Rapporteur on Torture, “Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment”, doc. A/65/273 of 10 August 2010, para. 35.

³⁴ The numbers of abductions in Chechnya – including some suspected to be linked to security forces – continue to be high. According to the office of Memorial, in 2011 at least 10 persons allegedly disappeared by law enforcement officials. (Memorial, ‘O sobytiyakh na Severnom Kavkaze’, continuously updated, available at <<http://www.memo.ru/hr/hotpoints/caucas1/index.htm>>.) The NGO Mashr also compiles and publishes information annually and keeps a list of reported enforced disappearances, listing 18 cases for 2011 out of which more than 2/3 were kidnapped and the rest had gone missing without more information. (Mashr, <http://eng.mashr.org/?page_id=7>=). See also *Chitayev and Chitayev v Russia*, ECtHR App. No. 59334/00; *Luluyev v Russia*, ECtHR App No.69480/01; *Isayev and Others v Russia*, ECtHR App No. 43368/04; *Isayeva, Yusopova and Bazayeva v Russia*, ECtHR, App. No. 57947/00.

³⁵ Igor Kalyapin: During two years not a single case of enforced disappearances has been transferred to court in Dagestan and Chechnya, 13 July 2012, <http://www.kavkaz-uzel.ru/articles/209670/> [Rus].

³⁶ A.V. Cherkasov, *Fate Unknown*, <http://www.memo.ru/2012/02/27/kvi.pdf>, Memorial 2012.

³⁷ Radio Liberty: *Disappearances of People in Chechnya: When will lawlessness stop?*, 13 February 2012, <http://www.svoboda.ru/content/transcript/24482200.html>.

³⁸ Amnesty International Report, “The Circle of Injustice, Security Operations and Human Rights Violations in Ingushetia”, 2012, p. 5220.

³⁹ Amnesty International Report, “The Circle of Injustice, Security Operations and Human Rights Violations in Ingushetia”, 2012, p. 47

⁴⁰ Memorial: First Trial Against Policemen-Sadists in Ingushetia: Drawn-out Farce, or Real Drama of Justice?, <http://www.memo.ru/eng/news/2012/06/18/1806121.html>.

⁴¹ Ingushetia: Court Will Not be Manipulated by Police Officers Guilty of Torture, <http://www.memo.ru/eng/news/2011/10/07/0710111.html>; The Accused Guliev and Nalgiev are Trying to Make their Case Appear Politically Motivated, <http://www.memo.ru/eng/news/2012/01/20/2001123.html>.

⁴² *Finogenov v Russia*, App No.18299/03, para 282.

⁴³ ECtHR, Statement of Facts, *Finogenov v Russia*, op cit.

⁴⁴ “Victims in high-profile terror act request new case”, *Rapsi*, July 2, 2012 http://rapsinews.com/judicial_news/20120702/263656604.html.

⁴⁵ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, Addendum, A/HRC/19/61/Add.4, p 57, state reply from 28 March 2011.

reports suggest unnatural death of the above circumstances".⁴⁶

23. Although in a recent case a police major, Sergey Kuzmenkov, was charged with abuse of office, convicted and sentenced to three-and-a-half years' imprisonment for having tortured a person in prison, the outcome was not satisfactory. While he was charged with a criminal offense, he was not dismissed from the police, but instead continued his service at the rank of major. Furthermore, investigations failed to identify the other two agents yet allegedly involved in torturing the detainee with Kuzmenkov.⁴⁷

24. In addition to these individual cases, repeated judgments of the European Court of Human Rights testify to a persistent problem of ineffective investigation of human rights violations, including torture and ill-treatment.⁴⁸ There is a pattern of investigations which begin late and are inexplicably delayed and adjourned; of prosecutors' instructions to investigate either ignored, or followed only after long delays; of crucial witnesses not interviewed, or relevant inquiries not made; and of victims and family members not being adequately involved or kept informed of progress in the investigation.⁴⁹ In certain instances, officials involved in ill-treatment and deaths in custody are not identified.⁵⁰ An Interim Resolution of the Council of Europe Committee of Ministers urged "the Russian authorities to enhance their efforts so that independent and thorough investigations into all abuses found in the Court's judgments are conducted".⁵¹

25. Recent research has confirmed that ineffective investigation of allegations of torture is often caused by the passiveness of investigative bodies that either do not take timely measures or fail to take steps clearly necessary to assess and investigate complaints of torture.⁵² The research, as well as numerous cases before the European Court of Human Rights, show that the initial investigation often fails to collect medical evidence or do so promptly;⁵³ fails to question independent witnesses or delays doing so;⁵⁴ fails to take other necessary investigative steps;⁵⁵ and/or fails to follow the orders of higher authorities.⁵⁶ Cases have been documented where investigations of torture have concluded that there was no objective evidence of an allegation despite the fact that such allegations had never been checked,⁵⁷ or where the police relied on police officers' evidence as credible while dismissing evidence of independent witnesses as false, treating such evidence as an attempt to avoid responsibility.⁵⁸ There have also been cases where

⁴⁶ Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, Recommended by Economic and Social Council resolution 1989/65 of 24 May 1989, principle 9.

⁴⁷ Nizhny Novgorod Committee Against Torture Press Release, "Former police major Kuzmenkov is awarded 3.5 years of imprisonment for torturing a Nizhny Novgorod resident", April 28, 2012 <http://pytkam.net/mass-media.news/930/pg2>.

⁴⁸ Statistics show that nearly half of the cases over the period between 1959 until 2011 considered by the Court and finding a breach of Article 2 ECHR (lack of effective investigations) were lodged against the Russian Federation. European Court of Human Rights Statistics, Violation by Article and by State 1959 - 2011, <http://www.echr.coe.int/ECHR/EN/Header/Reports+and+Statistics/Statistics/Statistical+data>. See for example *Isayev and Others v Russia*, ECtHR, App No. 43368/04; *Makhashevy v Russia*, ECtHR, App. No. 20546/07; *Gushchin v Russia*, ECtHR, App. no. 7480/07; *Markov v Russia*, ECtHR, App. no. 12297/06.

⁴⁹ *Makhashevy v Russia*, op cit, para 146; *Khashiyev and Akayeva v Russia*, op cit, para.166; *Abuyeva and Others v Russia*, ECtHR, App. No. 27065/05, December 2, 2010, para. 241; *Luluyev v Russia*, op cit, paras.99-100; *Isayeva v Russia*, op cit, paras.221-222; *Estamirov v Russia*, op cit para.89-95; *Khalidova v Russia*, App. No.22877/04, paras.93-98.

⁵⁰ *Velkhiyev and Others v Russia*, ECtHR, App. No. 34085/06, para 114-116.

⁵¹ Committee of Ministers, Interim Resolution on the Execution of the judgments of the European Court of Human Rights in 154 cases against the Russian Federation concerning actions of the security forces in the Chechen Republic of the Russian Federation, CM/ResDH(2011)292, December 2, 2011.

⁵² Implementation of Decisions of the European Court of Human Rights on effectiveness of investigation of complaints regarding torture and cruel treatment by the police, An analysis of the problem and recommendation of Russian human rights NGOs, 2012, http://www1.umn.edu/humanrts/russian/hrtsbook/Rtortureinvestigations_ruhrngos.html, [Rus].

⁵³ E.g. *Denisenko and Bogdanchikov v. Russia*, ECtHR, App. No. 3811/02, para 47; *Gladyshev v. Russia*, ECtHR, App. No. 2807/04, para 63; *Mikheyev v. Russia*, ECtHR, App. No. 77617/01, para 113.

⁵⁴ E.g. *Antipenkov v. Russia*, ECtHR, App. No. 33470/03, para 67; *Barabanshchikov v. Russia*, ECtHR, App. No. 36220/02, para 62; *Belousov v. Russia*, ECtHR, App. No. 1748/02, para 56; *Denisenko and Bogdanchikov v. Russia*, op cit, para 75.

⁵⁵ E.g. *Akulinin and Babich v. Russia*, ECtHR, App. No. 5742/02, para 51 and 53; *Antropov v. Russia*, ECtHR, App. No. 22107/03, para 49; *Mikheyev v. Russia*, op cit, para 113.

⁵⁶ E.g. *Antipenkov v. Russia*, op cit, para 68; *Mikheyev v. Russia*, op cit, para 114; *Polonskiy v. Russia*, ECtHR, App. No. 30033/05, para 112.

⁵⁷ *Akulinin and Babich v. Russia*, op cit, para 51; *Antipenkov v. Russia*, op cit, para 68; *Barabanshchikov v. Russia*, op cit, para 60; *Nadrosov v. Russia*, ECtHR, App. No. 9297/02, para 43.

⁵⁸ *Akulinin and Babich v. Russia*, op cit, para 52, *Antipenkov v. Russia*, op cit, para 67-69; *Barabanshchikov v. Russia*, op cit, para 61; *Belousov v. Russia*, op cit, para 55;

police officers failed to question victims⁵⁹ or did not grant access by victims to the investigation materials.⁶⁰ These deficiencies often result in an ineffective or delayed investigation. Another problem is the heavy reliance of judicial bodies on official reports of investigation, rather than on their own judicial investigation and assessment of facts.⁶¹ In addition, courts are not authorised to require certain specific measures to be taken by investigative bodies, often resulting in a failure to remedy flaws in previous investigations.⁶² Sometimes, even when complaints of ill-treatment are brought to the attention of domestic courts, the Court expresses no interest in conducting any investigation, nor does it request any additional information from the relevant authorities.⁶³

26. Difficulties in securing convictions of State agents for violations of human rights⁶⁴ are exacerbated by lack of judicial independence, in particular in Chechnya where conviction of State agents may place judges in danger as well as affect their security of tenure,⁶⁵ in contravention of the UN Basic Principles on the Independence of the Judiciary, in particular Principles 1, 2, 11 and 12. Strong pressure on judges to convict those accused of crimes related to terrorism is said to lead to unfair trials and unreliable convictions, and to impunity for many of the actual perpetrators of the crime.⁶⁶

27. This Committee has already commented on the insufficient level of independence of the prosecution in the Concluding Observations of the last periodic report submitted by the Russian Federation.⁶⁷ In addition, several NGOs have called for a set of measures that they consider necessary to improve the current system⁶⁸ and a conglomerate of NGOs has submitted proposals to the Russian Investigative Committee Chairman to establish an effective system of external control in the form of an independent body capable of investigating allegations of torture and ill-treatment committed by State officials.⁶⁹ On 18 April 2012, the Russian Investigative Committee announced its decision to create a specialised department to investigate crimes allegedly committed by law enforcers.⁷⁰ Creation of this body has been welcomed by Russian NGOs as a positive step with the potential to contribute to the investigation of torture.⁷¹

Article 3: Transfer of Suspects in Breach of the Obligation of *Non-refoulement*

28. The ICJ is particularly concerned about the consequences of Russian co-operation with other CIS countries, within the framework of the 2001 Shanghai Co-operation Organisation, including Kazakhstan, China, Kyrgyzstan, Tajikistan and Uzbekistan. 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 international human rights

⁵⁹ E.g. *Barabanshchikov v. Russia*, op cit, para 60; *Denisenko and Bogdanchikov v. Russia*, op cit, para 73; *Nadrosov v. Russia*, op cit, para 44.

⁶⁰ *Denisenko and Bogdanchikov v. Russia*, op cit, para 76; *Oleg Nikitin v. Russia*, ECtHR, App. No. 36410/02, para 37.

⁶¹ *Akulinin and Babich v. Russia*, op cit, para 54; *Barabanshchikov v. Russia*, op cit, para 63; *Nadrosov v. Russia*, op cit, para 45.

⁶² Implementation of Decisions of the European Court of Human Rights on effectiveness of investigation of complaints regarding torture and cruel treatment by the police, An analysis of the problem and recommendation of Russian human rights NGOs, 2012, http://www1.umn.edu/humanrts/russian/hrtsbook/Rtortureinvestigations_ruhrngos.html, [Rus].

⁶³ *Akulinin and Babich v Russia*, op cit, para. 54.

⁶⁴ Memorial – Demos submission to the Eminent Jurists Panel, op cit.

⁶⁵ Submissions to Eminent Jurists Panel, Memorial, <https://ejp.icj.org>; CAT, Concluding Observations, op cit, para.12.

⁶⁶ Memorial, *The situation in the conflict zone of the North Caucasus, October 2008 – May 2009*, <http://www.memo.ru/uploads/files/279.pdf>.

⁶⁷ Concluding Observations of the Committee against Torture, Russian Federation, UN Doc. CAT/C/R/CO/4, para 12.

⁶⁸ Nizhny Novgorod Committee Against Torture Press Release, “A new independent structure will stop tortures in the police Igor Kalyapin blogging on Grani.ru, March 27, 2012 < <http://pytkam.net/mass-media.news/908/pg7>>.”

⁶⁹ Nizhny Novgorod Committee Against Torture Press Release, “Human Rights defenders think the Investigative Committee should create an independent department to check police abuse allegations”, March 22, 2012 <http://pytkam.net/mass-media.news/905/pg8>.

⁷⁰ В Следственном комитете создано подразделение, которое будет специализироваться на расследовании преступлений, совершенных сотрудниками правоохранительных органов, April 18, 2012, <http://sledcom.ru/news/103893.html>.

⁷¹ Nizhny Novgorod Committee Against Torture Statement, “Open statement of human rights NGOs in connection with establishment of a specialised department within the Russian Investigative Committee”, April 20, 2012 <http://pytkam.net/mass-media.news/927/pg2>.

obligations and the rule of law, including the absolute prohibition on *refoulement* to face a real risk of torture and ill-treatment. 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.⁷² Given the widespread and systematic use of torture in several of the States Parties to the Convention, the ICJ is concerned about the many extraditions and informal transfers from Russia to other States Parties to the Shanghai Convention. Such transfers, that sometimes rely on diplomatic assurances against torture from States where torture is widespread or systematic, violate the obligation of *non-refoulement*.⁷³

29. Particularly problematic are returns to Uzbekistan. This is in violation of Russia’s obligation of *non-refoulement*⁷⁴ given that systematic use of torture continues in Uzbekistan and that, as assessed by the European Court of Human Rights: “no concrete evidence has been produced to demonstrate any fundamental improvement in this field in Uzbekistan in the last few years”.⁷⁵ Nevertheless, such transfers have been undertaken, some following expedited extradition proceedings.⁷⁶ Reports continue to arise of the Russian Federation preparing to extradite asylum-seekers.⁷⁷ Of particularly serious concern are the cases of abductions, including enforced disappearances, and extra-legal transfer, apparently with the involvement of both foreign intelligence services and Russian authorities.⁷⁸ In several cases, suspects whose extradition has been refused have shortly afterwards been abducted and transferred,⁷⁹ or transferred through immigration expulsion orders of dubious legality.⁸⁰ On at least one occasion, a transfer has been made in defiance of interim measures issued by the European Court of Human Rights.⁸¹

Cooperation with United Nations Human Rights Mechanisms

30. The ICJ is concerned about the refusal to allow the UN Special Rapporteur on torture to visit the North Caucasus during his 2006 visit, as well as the number of outstanding requests for visits by the Special Procedures of the Human Rights Council. The current Special Rapporteur on torture, Juan Méndez, reiterated his interest in conducting a country visit to the Russian Federation in 2012.⁸² Moreover, there are outstanding requests for visits to Russia by the Working Group on Arbitrary Detention, and the Working Group on Enforced Disappearances.⁸³

31. Delays in reporting to the Treaty Bodies and a lack of implementation of Concluding

⁷² See further, Declaration of Heads of Member States of Shanghai Cooperation Organisation, section III, 05.07.2005.

⁷³ *Gaforov v Russia*, App No 25404/09; Article 7 ICCPR, General Comment No.20, 10/3/92, para.9

⁷⁴ *Sultanov v Russia*, App. No 15303/09, *Ismoilov v Russia*, App. no. 2947/06; *Ryabikin v Russia*, App No.8320/04; *Khaydarov v Russia*, App. No. 21055/09.

⁷⁵ *Ergashev v Russia*, App. No. 12106/09.

⁷⁶ Human Rights Watch Statement, Russia: Stop Extradition to Uzbekistan Abide by European Court Rulings Prohibiting Returns to Torture July 17, 2012

⁷⁷ Amnesty International Statement, “Russia: Asylum-Seeker Facing Extradition, Torture: Mamir Nematov”, August 3, 2012, <http://amnesty.org/en/library/info/EUR46/032/2012/en>; Amnesty International Statement, “Russian Federation: Uzbek Man Facing Extradition, Torture: Yusup Salimakhunovich Kasymakhunov”, July 9, 2012 <http://amnesty.org/en/library/info/EUR46/027/2012/en>.

⁷⁸ *Iskandarov v Russia*, App. No 17185/05, where the applicant was unlawfully abducted and transferred to Tajikistan on a plane by Russian State agents without having to go through the regular cross-border controls; 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>.

⁷⁹ *Iskandarov v Russia*, App. No.171854/05; Of particular concern are allegations of intelligence services of the five Central Asian republics, most often Uzbekistan, carrying out extra legal activities on the territory of Russian Federation. See: Assessing Damage, Urging Action, Report of the Eminent Jurists Panel on Terrorism, Counter-terrorism and Human Rights, International Commission of Jurists, 2009, p.82

⁸⁰ *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.

⁸¹ *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 knew of the Rule 39 measure before the applicant was removed from the jurisdiction, and therefore found no violation of Article 34 ECHR.

⁸² Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, A/HRC/19/61, January 18, 2012, para 6.

⁸³ See requests for visits by Special Procedures, <http://www2.ohchr.org/english/bodies/chr/special/countryvisitsn-z.htm>.

Observations, and Views in individual communications, are also of concern.⁸⁴ The Russian Federation has neither signed nor ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).

RECOMMENDATIONS

32. Against the background of the information provided within this submission, the ICJ urges the Committee against Torture to recommend that the Russian Federation:

Articles 1, 4 and 16

1. Introduce the crime of torture into the Criminal Code in a way that includes all the elements necessary under the Russian legislation and legal doctrine to make criminalisation of torture effective and operational in regard to the commission of all acts defined in Article 1 of the Convention.
2. Ensure that acts amounting to torture as defined in Article 1 of the Convention are prosecuted as torture under Article 117 of the Criminal Code, rather than as more minor offences such as abuse of power, carrying lighter penalties.
3. Bring the scope of the crime of torture in Article 117 of the Criminal Code in line with Articles 1 and 4 of the Convention by extending the crime of torture to cover acts aimed at coercing a third party and by specifying that the offence applies to acts of State officials including police officers as well as of private persons.
4. To ensure that any other form of ill-treatment as defined in Article 16 of the Convention is equally prevented, prohibited, criminalised and prosecuted as required by the Convention.⁸⁵
5. Amend the Criminal Code to remove limitation periods for crimes under Articles 117 and 302 of the Code.

Articles 2, 10 and 11

Access to a lawyer

6. Implement in practice the principle of immediate access to an independent lawyer, for a period of time sufficient to provide effective legal advice, immediately following arrest or detention and regularly thereafter.
7. Take effective measures to protect against harassment and threats towards lawyers, in particular in the North Caucasus.

Information provided to the family of the detainee

8. Ensure that all detainees enjoy in practice an immediate right to inform a family member or other person of their detention.

Judicial review of detention

9. Ensure that in practice judicial review of detention is real and substantial, and is sufficient to safeguard detainees against ill-treatment.
10. Take measures to decrease reliance on detention as a preventive measure.

Article 12

11. Take urgent measures to ensure prompt, effective and independent investigations into all allegations of torture, other ill-treatment and enforced disappearances throughout the Russian Federation and in particular in the North Caucasus.
12. Takes effective measures to prevent and put an end to the practice of and impunity for torture and other ill-treatment by military, security services or other State agents.

⁸⁴ See for example: Concluding observations of the Human Rights Committee, UN Doc CCPR/CO/79/RUS, para 2; Amnesty International, "Briefing to the Human Rights Committee on follow-up to the concluding observations on Russia's sixth periodic report under the International Covenant for Civil and Political Rights (ICCPR)", February 2011.

⁸⁵ UN CAT, General Comment No 2, paras. 3 and 6.

13. Carry out systematic and structural changes in the law enforcement and justice systems aimed at effectively tackling the problems of impunity for torture and other ill-treatment in the North Caucasus and elsewhere in Russia.
14. Ensure that independence of the judiciary is guaranteed and that judges who consider cases involving allegations of ill-treatment and other human rights violations are well protected if necessary and that lawyers are not subject to attacks, harassment or other pressure.

Article 3

15. Scrupulously respect the right to *non-refoulement* in all extraditions or other transfers where there is a real risk of torture or other cruel, inhuman or degrading treatment, and ensure that detentions and transfers comply with national law and procedures as well as international human rights obligations.

Cooperation with United Nations Human Rights Mechanisms

16. Respond positively to the request of the Special Rapporteur on torture, as well as of the Working Groups on Arbitrary Detention and Enforced Disappearances, to undertake official country visits to the Russian Federation and extend all reasonable cooperation and assistance to facilitate timely and effective country visits without restrictions.
17. Become party to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and prepare implementing legislation, including the establishment of a national monitoring mechanism, without delay.
