



**Human Rights Committee  
International Commission of Jurists submission to the review  
of the 6<sup>th</sup> Periodic Report of the Russian Federation**

*September 2009*

The International Commission of Jurists (ICJ) wishes to provide its views to the Human Rights Committee, in advance of the consideration of 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 the 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 counter-terrorism operations in Chechnya and the North Caucasus; increasing harassment and persecution of lawyers; harassment and restrictions on the rights of human rights defenders; provisions of counter-terrorism legislation that risk violations of Covenant rights; 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 danger of torture or other serious violation of human rights.

**1. Impunity for Gross Violations of Human Rights**

*Impunity in relation to counterterrorism operations in the North Caucasus*

Despite increased stability in the region, practices of arbitrary, including secret, detentions, torture and cruel, inhuman or degrading treatment (ill-treatment), and enforced disappearances continue to be widespread in Chechnya, as well as elsewhere in the North Caucasus, in contravention of Russia's international legal obligations, including under the International Covenant on Civil and Political Rights (ICCPR). There are numerous reliable and consistent reports of arbitrary detention, including secret detention, 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 authorities or central government.<sup>1</sup> In the

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<sup>1</sup> 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

first four months of 2009, the number of abductions in Chechnya – including some suspected to be linked to security forces - exceeded the total number of abductions in 2008.<sup>2</sup> In Dagestan arrests *en mass* of ten, twenty, forty people without a lawful basis have become a routine.<sup>3</sup> 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 from their families.<sup>4</sup> There have been no signs of improvement in respect of such practices of the law-enforcement agencies; moreover, the number of reported cases of ill-treatment has recently risen.<sup>5</sup>

Underlying and perpetuating these violations of human rights are chronic problems of impunity, and lack of effective investigation, legal redress and remedies for victims, in violation of Russia's international law obligations, including under the ICCPR, to investigate, prosecute and provide reparations for violations of human rights. There have been no convictions of senior officials for crimes involving serious human rights violations in the North Caucasus, including violations that constitute crimes under international law. 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,<sup>6</sup> arbitrary killing,<sup>7</sup> or enforced disappearance<sup>8</sup> 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

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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.

<sup>2</sup> Memorial Human Rights Center, Report for the next round of consultations on Human Rights European Union – Russia, The situation in the conflict zone of the North Caucasus, October 2008 – May 2009, <<http://www.memo.ru/2009/05/29/2905094.htm>>

<sup>3</sup> *Ibid.*

<sup>4</sup> 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 was released on 16 February, 2009.

<sup>5</sup> Crisis of the Law Enforcement System in Russia, The Problem of Torture and Cruel Treatment by the Police, Public Verdict Foundation < <http://www.mhg.ru/english/D14DBD7> >, Memorial Human Rights Center, People are again Abducted in Chechnya,

<sup>6</sup> *Chitayev and Chitayev v Russia*, op cit, para.165.

<sup>7</sup> *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.

<sup>8</sup> *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.

inquiries not made; and that victims and family members were not adequately involved or kept informed of progress in the investigation.<sup>9</sup>

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 rather to be suspended for long periods, so that relatives are unable to obtain a final judgment and so have no possibility of appeal.<sup>10</sup> Where the suspension is found to be unlawful, the investigation typically will be briefly re-opened, and then suspended again.<sup>11</sup> Often from the very beginning, investigations appear to be purposefully conducted with flaws in order for the judge or the juries to find procedural violations leading to a re-investigation.<sup>12</sup> This creates a 'ping ponging' of cases, resulting in never-ceasing processes in which accountability cannot be established. 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 rights<sup>13</sup> 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,<sup>14</sup> 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 leads to unfair trials and unreliable convictions, and to impunity for many of the actual perpetrators of the crime.<sup>15</sup>

Judges elsewhere in the North Caucasus also face criminal attacks, as evidenced by the recent murder of a senior Ingushetian judge.<sup>16</sup> Judge Aza Gazgireeva, Deputy Chief Justice of the regional Supreme Court, was shot dead outside her children's kindergarten in Nazran, just over one year after her predecessor, Judge Hasan Yandiev, had also been shot dead. The investigation into that killing has still not concluded. Both judges had been involved in anti-corruption

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<sup>9</sup> *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.

<sup>10</sup> Nizhny Novogorod Committee Against Torture, submission to Eminent Jurists Panel, <https://ejp.icj.org>

<sup>11</sup> Memorial submission to the Eminent Jurist Panel, op cit.

<sup>12</sup> Conversation with Memorial, June 2009.

<sup>13</sup> Memorial – Demos submission to the Eminent Jurists Panel, op cit.

<sup>14</sup> Submissions to Eminent Jurists Panel, Memorial, <https://ejp.icj.org>; CAT, Concluding Observations, op cit, para.12.

<sup>15</sup> The situation in the conflict zone of the North Caucasus, October 2008 – May 2009, op cit.

<sup>16</sup> ICJ Press Release, Russian Federation: ICJ calls for thorough, independent investigation into killing of judge

<[http://www.icj.org/news.php?id\\_article=4509&lang=en](http://www.icj.org/news.php?id_article=4509&lang=en)>

cases, as well as cases involving armed groups.

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.<sup>17</sup> The lawyers of such victims 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.<sup>18</sup> 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 abduction of Mohmadsalah Denilovich Masaev, shortly after he gave a newspaper interview about his previous secret detention.<sup>19</sup>

**In its consideration of the periodic report of Russia, the Human Rights Committee should ask the State party to justify the lack of investigations into allegations of serious human rights violations in the North Caucasus, and recommend that the State party as a matter of priority:**

- **conduct thorough and effective investigations into the serious human rights violations taking place in Chechnya and elsewhere in the North Caucasus, including in counter-terrorism operations;**
- **take effective measures to prevent and put an end to the practice of and impunity for violations of human rights by military, security services or other state agents, including torture and other ill-treatment, unlawful killing in violation of the right to life, enforced disappearances, and arbitrary detention,**
- **desist from obstructing the effective exercise of the right to a remedy, including by the victims of human rights violations through application to Russian courts and the European Court of Human Rights;**
- **carry out systematic and structural changes in the law enforcement and justice systems aimed at effectively tackling the problems of impunity for serious human rights violations in the North Caucasus and elsewhere in Russia.**

### *Failure to investigate the Dubrovka Theatre and Beslan School sieges*

The controversial law enforcement operations mounted in response to the two largest terrorist attacks, at the Dubrovka 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. The ongoing criminal

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<sup>17</sup> 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>

<sup>18</sup> 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*.

<sup>19</sup> OMCT, Case RUS 080808, Forced disappearance /Fear for safety.

investigation into the Beslan siege had been extended 31 times by September 2009.<sup>20</sup>

In the case of the Dubrovka Theatre siege, in which Chechan rebels seized control of the theatre, which was stormed by special forces after three days, many victims and their families 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.<sup>21</sup> 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 relevant 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.<sup>22</sup>

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.<sup>23</sup> 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 2006<sup>24</sup> but were granted an amnesty following their conviction.<sup>25</sup> One of the hostage-takers, reportedly the only one to survive, Nur-Pashi Kuayev, was convicted on a series of charges of terrorism and

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<sup>20</sup> *Mothers of Beslan are not happy with investigation of the criminal case on terror act*, Interfax, 1 September 2009, < <http://www.interfax.ru/news.asp?id=98397> >

<sup>21</sup> ECtHR, Statement of Facts, *Finogenov v Russia*, App no.18299/03.

<sup>22</sup> Concluding Observation of the Human Rights Committee on the Russian Federation, CCPR/CO/79/RUS, 1 December 2003, Para.14.

<sup>23</sup> Sunday Herald, *Beslan school siege inquiry "a cover up"*, 11 February 2007.

<sup>24</sup> The Guardian, *Police on trial over Beslan massacre*, 16 March 2006.

<sup>25</sup> Reuters, *Amnesty Granted to Beslan siege police*, 29 May 2007.

murder in May 2006<sup>26</sup> after he had alleged at his trial that he had been subjected to four months of beatings during his interrogations.<sup>27</sup>

**The Human Rights Committee should recommend that the State party:**

- **take urgent steps to address the lack of independent, effective, thorough and prompt investigations into the counter-terrorism operations carried out at the Dubrovka theatre in Moscow in 2002, and at School No.1 in Beslan in 2004, and involve and provide information to family members of the victims of both incidents;**
- **hold accountable persons responsible for criminal conduct in respect of these instances, particularly where such conduct contributed to a violation of articles 6 or 7 of the Covenant;**
- **provide appropriate reparation to the victims of these incidents;**
- **provide information regarding the progress and results of any inquiry into the allegations of torture and other ill-treatment by Nur-Pashi Kulaev, and whether evidence obtained through torture or other ill-treatment was excluded during his trial.**

### **3. Legal Framework for Counter-terrorism operations**

#### *“Counter-terrorism regime”*

Under the Law on Counteraction to Terrorism, where a counter-terrorist operation is initiated, a special “counter-terrorism regime” applies within the territory on which the operation takes place.<sup>28</sup> The regime applies counter-terrorism measures additional to those generally applicable, and allows for particular restrictions on rights.<sup>29</sup> When such a “regime” is imposed, the authorities conducting the counter-terrorism operation can exercise a range of special powers which, individually and cumulatively, are highly intrusive of the Covenant rights, in particular rights under Articles 9, 12, 17 and 21. These include: search of persons and vehicles, as well as checks on identification documents, and detention of persons unable to produce such documents;<sup>30</sup> removal of persons from certain locations and objects<sup>31</sup>; control over telephone communications and other information transmitted through the channels of

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<sup>26</sup> 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>

<sup>27</sup> Participant of the school siege in Beslan Kulaev: part of the hostages could have been released in exchange for negotiations with the authorities, *The Caucasian Knot*, <http://www.kavkaz-uzel.ru/newstext/news/id/826440.html> <<http://www.kavkaz-uzel.ru/newstext/news/id/826440.html>> ; I do not Consider myself Guilty of a Single Drop of Blood, *Kommersant*, <http://www.kommersant.ru/doc.aspx?DocsID=650669> <<http://www.kommersant.ru/doc.aspx?DocsID=650669>>

<sup>28</sup> Article 11(1), the Law on Counteraction to Terrorism.

<sup>29</sup> Article 11(3)

<sup>30</sup> Article 11.3(1)

<sup>31</sup> Article 11.3(2)

telecommunication systems,<sup>32</sup> suspension of communication services<sup>33</sup>, temporary resettlement,<sup>34</sup> limitation of movement of transport facilities and pedestrians on the streets, roads, certain areas,<sup>35</sup> free entry into dwellings or other premises and property.<sup>36</sup> It is of particular concern that these highly intrusive powers are not subject to any requirement for justification on grounds of necessity or proportionality, or to procedural safeguards or mechanisms of judicial or parliamentary oversight. The law does not specify the authority responsible for introduction of the regime, referring only to “the head of a federal body of the executive”.<sup>37</sup> It is also particularly problematic that the counter-terrorism regime may continue indefinitely: in Chechnya, for instance, the regime lasted for 10 years, terminating only in April 2009.<sup>38</sup> Domestic procedures for the suspension of rights during a state of emergency, under the Constitution of the Russian Federation, and the State of Emergency law, are not applied where a counter-terrorism regime is invoked,<sup>39</sup> although, the consequences of a counterterrorism regime are equal to those of an emergency situation.

The ICJ considers that this regime constitutes a state of exception, the invocation of which engages the obligations of the Russian Federation under article 4 ICCPR related to states of emergency. The Russian Federation is therefore obliged to discharge its obligations under Article 4(1) by ensuring that measures derogating from provisions of the Covenant be taken pursuant to a public emergency that threatens the life of the nation and which is officially proclaimed. Any such derogating measures must be strictly necessary to meet a specific threat in that respect. In addition, states ‘must act within their constitutional and other provisions of law that govern such proclamation and the exercise of emergency powers’.<sup>40</sup> The Counter-terrorism Law requires none of these fundamental conditions and its application may therefore result in violation of the Covenant rights, including under Articles 9, 12 and 17. As this Committee has pointed out, the introduction of the counterterrorism regime cannot justify departure from rights as ‘by merely invoking the existence of exceptional circumstance [the

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<sup>32</sup> Article 11.3(4)

<sup>33</sup> Article 11.3(7)

<sup>34</sup> Article 11.3(8)

<sup>35</sup> Article 11.3(10)

<sup>36</sup> Article 11.3(11)

<sup>37</sup> Articles 12(2) and 11(1)

<sup>38</sup> End of counter-terrorism regime in Chechnya, Russia Today, 16 April, 2009, [http://www.russiatoday.com/Top\\_News/2009-04-16/End\\_of\\_counter-terrorism\\_regime\\_in\\_Chechnya.html/print](http://www.russiatoday.com/Top_News/2009-04-16/End_of_counter-terrorism_regime_in_Chechnya.html/print)

<sup>39</sup> The Constitution of the Russian Federation in its article 56 allows for limitations of rights it guarantees during the ‘state of emergency’. The law ‘On the State of Emergency’ specifies the circumstances of the introduction of the emergency which is a direct threat to the life and security of citizens or constitutional order of the Russian Federation, the elimination of which is not possible without emergency measures. The provisions includes a requirement notification of the UN Secretary General and CE Secretary General ‘in accordance with international obligations of the Russian Federation’ under the ICCPR and ECHR (Constitution of the Russian Federation, art. 37).

<sup>40</sup> ICCPR General Comment 29(2)

State] cannot evade the obligations, which it has undertaken by ratifying the Covenant.<sup>41</sup>

**The Human Rights Committee should recommend that the State Party:**

- **abrogate or amend the law on Counteraction to Terrorism to bring it in conformity with the requirements of the Covenant, including standards for derogation under article 4 ICCPR, in circumstances where there is a proclaimed and notified emergency that threatens the life of the nation;**
- **desist from any measures under the Regime that serve to impair the enjoyment of Covenant rights.**

### *Pre-charge detention*

Amendments enacted in 2004 to Article 100 of the Criminal Procedure Code (“Measures of restriction with regard to a suspect”) extend the period of time before a detained person is to be charged with a crime or released, from 10 to 30 days.<sup>42</sup> The amendments apply to terrorism related crimes, as well as to crimes such as banditism,<sup>43</sup> encroachment on the life of a statesman or a public figure,<sup>44</sup> forcible seizure of power or forcible retention of power.<sup>45</sup> In light of information about systematic and widespread violations, and lack of independence of the judiciary, such an extended period of detention during which detainees can effectively be placed beyond all basic protections, with no effective or judicial review, can in practice lead to greater violations of ICCPR rights, as was affirmed by the Report of the Eminent Jurists Panel on Terrorism Counter-terrorism and Human Rights.<sup>46</sup>

**The Human Rights Committee should recommend that the State party reduce the time period during which a person can be held without being charged with a crime in accordance with its obligations under article 9 of the ICCPR as well as to introduce an effective mechanism of judicial control in respect of all situations where persons are deprived of their liberty.**

### *Abolition of Jury Trial for some cases*

The ICJ is concerned by the enactment of Criminal Code amendments that entered into force in December 2008 that abolishing jury trial for cases involving terrorist acts<sup>47</sup>, hostage taking,<sup>48</sup> creating an illegal armed group,<sup>49</sup> organising mass disorder<sup>50</sup>, treason,<sup>51</sup> espionage<sup>52</sup>, violent seizure of power<sup>53</sup>, armed revolt<sup>54</sup>,

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<sup>41</sup> *Landinelli Silva v Uruguay* (34/78) para. 8.3, *Montejo v Colombia* (64/79) para. 10.03.

<sup>42</sup> Amended by the Federal Law of 22.04.2004. N 18-FZ

<sup>43</sup> Criminal Code, Article 209

<sup>44</sup> Article 277

<sup>45</sup> Article 278

<sup>46</sup> Assessing Damage, Urging Action, Report of the Eminent Jurists Panel on Terrorism, Counter-terrorism and Human Rights, International Commission of Jurists, 2009, pp.65, 147-148.

<sup>47</sup> Criminal Code of the Russian Federation, article 205.

<sup>48</sup> Art. 206

<sup>49</sup> Art. 208(1)

<sup>50</sup> Art. 212(1)

and sabotage<sup>55</sup> that entered into force in December 2008 raise concerns. The Special Rapporteur on the independence of judges and lawyers noted that an acquittal rate around 1.1 per cent in non-jury trials 'leads to the assumption that the principle of presumption of innocence is not consistently enforced in practice'.<sup>56</sup> He further pointed out that the failure to execute judicial decisions<sup>57</sup>, the fact that judges typically served as prosecutors, investigators or court clerks prior to their judicial appointment, the existence of "telephone justice" and other forms of corruption, absence of objective criteria for allocating cases among judges, and the continued use of information obtained through torture despite an explicit prohibition in law,<sup>58</sup> all served to hamper the administration of justice.<sup>59</sup> Removing juries from types of cases in which abuses are regularly reported is likely to lead to even more violations of fair trial guarantees, impunity for serious human rights violations including torture and other ill-treatment and extrajudicial executions.<sup>60</sup>

**The Human Rights Committee should recommend that the State party reinstate the right to jury trial for those cases in which it was abolished in order to ensure the effective protection of the right to a fair trial under article 14 ICCPR.**

### *Ban on handing the bodies of alleged terrorists to their relatives*

In December 2002, the Russian Duma introduced amendments to the Federal Law on Burial and Funeral Services prohibiting the handing over of bodies of deceased individuals, including to family members, whose prosecution for crimes of terrorism had been terminated following their death as a result of a counter-terrorism operation.<sup>61</sup> The law was challenged before the Constitutional Court, which ruled on 28 June 2007 that it was a permissible measure as it pursued constitutional aims and was necessary in order to ensure public safety and public security, protection of public order, health and morals and protection

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<sup>51</sup> Art. 275

<sup>52</sup> Art. 276

<sup>53</sup> Art. 278

<sup>54</sup> Art. 279

<sup>55</sup> Art. 281

<sup>56</sup> Report of the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, 23 March 2009, A/HRC/11/41/Add.2, para. 37.

<sup>57</sup> Recent cases: case of *Burdov v. Russia* (No. 2) (Application no. 33509/04), *Nagovitsyn v. Russia*, no. 6859/02, 24/1/2008; *Khamidov v. Russia*, no. 72118/01, 15/11/2007; Execution of the judgements of the European Court of Human Rights, Interim Resolution, CM/ResDH(2009)43, <https://wcd.coe.int/ViewDoc.jsp?id=1423205&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75>

<sup>58</sup> Criminal Code article 235 para. 4

<sup>59</sup> Report on the Special Rapporteur on the independence of judges and lawyers, op cit.

<sup>60</sup> Appeal by human rights defenders in defence of the jury trial, Alekseeva L.M., Moscow Helsinki Group and others, 03.12.2008,

<[http://www.zaprava.ru/index2.php?option=com\\_content&task=view&id=1667&pop=1&page=0](http://www.zaprava.ru/index2.php?option=com_content&task=view&id=1667&pop=1&page=0)>

<sup>61</sup> Federal Law of 12 January 1996 N 8-FZ *On Burial and Funeral Services*, art. 14.1

of rights and freedoms of others.<sup>62</sup> The Court also required that persons be buried in accordance with their customs and traditions and affirmed that persons have a right to challenge in court the decision on person's participation in a terrorist attack.<sup>63</sup>

The law and practice appears to contravene the Russian Federation's obligations under the ICCPR. This Committee on several occasions has found that refusal to return bodies to relatives as well as secrecy surrounding the burial constitute treatment contrary to article 7 ICCPR. With regard to executed persons and their relatives, the Committee found in *Bondarenko v. Belarus*, that "complete secrecy surrounding the date of execution and the place of burial and the refusal to hand over the body for burial have the effect of intimidating or punishing families by intentionally leaving them in a state of uncertainty and mental distress".<sup>64</sup> The Committee further recommended the State to provide the author information on the location where her son was buried.<sup>65</sup> The Committee came to the same conclusions in *Lyashkevich v. Belarus*<sup>66</sup> and its Concluding Observations finding that failure by the authorities to systematically inform the relatives of execution and to reveal the place of burial of the executed person amounted to a violation of article 7 of the Covenant with respect to the relatives of the executed person.<sup>67</sup> Apart from exacerbating the anguish of parents and family members who have lost their relatives, these secret procedures create a possibility of abuse and deprive relatives of the truth about the fate of next of kin.<sup>68</sup>

The ICJ further notes that the procedure which does not allow relatives involvement in the disposition of the bodies of deceased family members, including through funeral ceremonies such as burial, infringes rights of privacy and family life, as well as freedom of religion, as provided under ICCPR articles 17, 24 and 19 respectively. The procedure prevents the family from burying their relatives in a manner deemed by them appropriate with participation of the family members. In a case involving return of a daughter's body, the European Court of Human Rights, ruling on a violation of rights of the parents, found that the French authorities, in delaying return of the daughter's body, failed to strike a fair balance between the applicants' right to respect for their private and family life and the legitimate aim pursued.<sup>69</sup> The ICJ considers that limitations on private and family life and freedom to manifest religion, as a result of the Law on

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<sup>62</sup> Decision of the Constitutional Court of the RF of 28 June 2007 N 8-P "On the case on examining constitutionality of article 14.1 of the Federal Law on Burial and Funeral Service and Regulations on burial of persons whose death followed as a result of suppression of terrorist act committed by them due to the complaint of citizens K.I. Guziev and E.Kh. Karmova".

<sup>63</sup> *Ibid.*

<sup>64</sup> *Bondarenko v Belarus*, (886/1999), ICCPR, A/58/40 vol. II 3 April 2003, para. 10.2

<sup>65</sup> *Ibid.* at para. 12.

<sup>66</sup> *Lyashkevich v Belarus*, (887/1999), ICCPR, A/58/40 vol. II, 3 April 2003

<sup>67</sup> HRC Concluding Observations on Uzbekistan, CCPR/CO/83/UZB, See also: HRC Concluding Observation on Belarus, CAT/A/56/44, 2001.

<sup>68</sup> *Relatives of the deceased in Nalchik: Sins of Torture have been Burned in Crematoria, Caucasian Knot, 7/7/2007* [In Russian]. *The Ministry of Internal Affairs of Dagestan Assert that They do not Sell Killed Terrorists to Relatives, Caucasian Knot, 10/10/2008*, [In Russian]. *Dorogova: Cremation of bodies of the deceased in the capital of Kabardino-Balkaria is a sacrilege, Caucasian Knot, 4/7/2007*, [In Russian].

<sup>69</sup> *Pannullo and Forte v France*, 30 October 2001

Burial, do not meet criteria of reasonableness,<sup>70</sup> necessity and proportionality,<sup>71</sup> nor does the law provide adequate safeguards against unlawful interference<sup>72</sup>, as required by the Covenant.

**The Human Rights Committee should recommend that the State party:**  
- amend the Law on Burial and Funeral Services to exclude the provision prohibiting relatives to receive the bodies of their family members contrary to the ICCPR guarantees;  
- provide reparations, including compensation, and information on place and manner of burial, to the relatives of the persons whose bodies have already been disposed of in some manner.

## **2. Protection of lawyers and human rights defenders**

### *Attacks on human rights defenders*

The safety of lawyers, journalists and other human rights defenders, in particular those whose work relates to Chechnya, has come under increasing threat. There has been a series of murders of prominent human rights defenders working on Chechen issues, in both Chechnya and in Moscow. These include the killing of human rights lawyer Stanislav Markelov on a Moscow street on 19 January, and of Natalya Estemirova, head of the Memorial office in Grozny, kidnapped in Grozny on 15 July and found dead across the border in Ingushetia later the same day.<sup>73</sup> On 10 August, the head of an NGO providing assistance to child victims of the conflict, Zarema Sadulayeva, was kidnapped together with her husband; both were later found dead.<sup>74</sup> Attacks and threats against NGO activists have become routine, and crimes against NGO staff have increased in number and gravity.<sup>75</sup> In Makhachkala, in Dagestan, hundreds of leaflets have been distributed on behalf of “the relatives of policemen killed in Dagestan” which threaten to torture and execute human rights defenders, lawyers and journalists who are mentioned by name.<sup>76</sup> The leaflets refer to the abduction of five people, three of whom were killed in August 2009 and two of whom managed to

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<sup>70</sup> *Aumeeruddy-Cziffra and Others v Mauritius* (35/1978), 9 April 1981 (A/36/40, annex XIII, para. 9.2(b) 2 (i) 8).

<sup>71</sup> General Comment 16: “The Committee interprets that the requirement of reasonableness to imply that any interference with privacy must be proportional to the end sought and be necessary in the circumstances of any given case”, para. 8.3.

<sup>72</sup> HRC Concluding Observations on the Russian Federation 1995: ... “[The Committee] is concerned that the mechanisms to intrude into private telephone communications continue to exist, without clear legislation setting out the conditions of legitimate interferences with privacy and providing for safeguards against unlawful interferences”, Un doc. CCPR/C/79/Add. 54, para. 19.

<sup>73</sup> Russian Federation: ICJ calls for action to protect human rights defenders following killing of Natalya Estemirova [http://www.icj.org/news.php3?id\\_article=4521&lang=en](http://www.icj.org/news.php3?id_article=4521&lang=en)

<sup>74</sup> Memorial: kidnapped Chechen activist found dead, 11 August

<sup>75</sup> *Situation of NGOs and Freedom of Association in Russia: Latest Developments*, Yuri Dzhibladze, Center for the Development of Democracy and Human Rights, <http://www.memo.ru/2009/05/29/2905095.htm>

<sup>76</sup> Open letter on occasion of threats to human rights defenders and journalists in Dagestan, Memorial Human Rights Center, <<http://www.memo.ru/2009/09/08/0809091.htm>>

escape.<sup>77</sup> Such threats place the Government under an obligation to take reasonable and appropriate measures to protect the threatened persons.<sup>78</sup>

Impunity for crimes against human rights defenders, and hostile government rhetoric identifying human rights defenders as unpatriotic, have formed the background to this pattern of killings. It is therefore a welcome first step that President Medvedev condemned the killing of Natalya Estemirova, recognised the importance of her work as a human rights defender, and pledged a full investigation into her killing. The ICJ also welcomes the initiative by the Ombudsman, Vladamir Lukin, to establish a working group, with the participation of human rights defenders, to monitor gross violations of human rights in the North Caucasus. In order to fulfil the duty to protect under Articles 6 and 7 ICCPR however, further, concerted government action is needed to re-establish an environment in which human rights defenders can carry out their work in safety in North Caucasus and in the Russian Federation in general, in reliance on the rule of law.

**The Human Rights Committee should recommend that the State party:**

- **take all necessary measures to ensure that recent killings of human rights defenders are subject to independent, effective and timely investigations, capable of actively identifying those responsible for both the planning and execution of the killings, and of bringing them to justice;**
- **develop a legal framework that effectively protects and ensures the safety of human rights defenders, especially, but not limited to, those working in violent environments, and that includes provision for full reparation to victims;**
- **work with the Ombudsman, and with human rights defenders themselves, to take practical measures to protect the safety of human rights defenders working in the North Caucasus and to prevent and investigate threats of violence against them in accordance with obligations under the Covenant;**
- **take all appropriate measures to provide the security of all the persons listed in the leaflet distributed in Makhachkala, Dagestan, and conduct independent, prompt and thorough investigations of the threats.**

### *Harassment and persecution of lawyers*

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.<sup>79</sup> Such harassment is contrary to the UN

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<sup>77</sup> Five Men Abducted in Dagestan, Memorial, <<http://www.memo.ru/hr/hotpoints/caucas1/msg/2009/08/m173485.htm>>

<sup>78</sup> Delgado Paez v Colombia, Communication N 195/1985, CCPR/C/39/195/1985, 23 August 1990, para. 5.5.

<sup>79</sup> ICJ, *Attacks on Justice 2005, The Russian Federation*, [www.icj.org](http://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.

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.<sup>80</sup> 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.<sup>81</sup>

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 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 of the right to a fair trial,<sup>82</sup> protected by Article 14 ICCPR as well as Article 22 of the UN Basic Principles on the Role of Lawyers.

**The Human Rights Committee should recommend that the State party take measures to tackle the problem of harassment and persecution of lawyers and attempts to impede or interfere with their defence of clients. In particular it should question the Government on the proposed law on lawyers' activities and the bar, and assess its compatibility with Article 14 ICCPR and correlative principles on the independence of the legal profession.**

#### *Legislative restrictions affecting human rights defenders*

The *Federal Law on Counteraction of Extremist Activities* (Extremism Law),<sup>83</sup> in conjunction with the law on regulation of NGOs,<sup>84</sup> have provided the framework for increasing harassment and obstruction of the work of human rights

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<sup>80</sup> 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.

<sup>81</sup> 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](http://www.icj.org)

<sup>82</sup> ECtHR, *S v Switzerland* App. no.12629/8

<sup>83</sup> Federal Law on Counteraction of Extremist Activities, No.114 FZ July 2002, as amended 2006 & 2007.

<sup>84</sup> Federal Law of 10 January 2006, On enactment of amendments to some legislative acts of the Russian Federation.

defenders.<sup>85</sup> 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 by 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.<sup>86</sup> 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.<sup>87</sup> 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.<sup>88</sup>

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.<sup>89</sup> 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.<sup>90</sup> Such applications of the law lead to disproportionate interferences with freedom of expression and association, contrary to Articles 19 and 22 ICCPR.

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. The NGO law of 2006<sup>91</sup> established a new authority of oversight of 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.<sup>92</sup> It introduced stringent registration procedures for both Russian

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<sup>85</sup> Eminent Jurists Panel Submissions, op cit, Sova Centre; Centre for the Development of Democracy and Human Rights.

<sup>86</sup> Sova Centre, *Anti-Extremism legislation, its use and misuse*, Alexander Verkhovsky, 5/7/2008, <http://xeno.sova-center.ru>

<sup>87</sup> Law on Counteraction of Extremist Activities, op cit, Articles 6-16.

<sup>88</sup> Russian Criminal Code, Article 280, Article 282.

<sup>89</sup> 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.

<sup>90</sup> ICJ e-bulletin on counter-terrorism and human rights, January 2008, [www.icj.org](http://www.icj.org); the charges were dismissed by the Pravoberezhny District Court of North Ossetia, ICJ e-bulletin, May 2008.

<sup>91</sup> 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.

<sup>92</sup> Ibid, Article 1 amending Article 38 of the 1992 law.

and foreign NGOs operating in Russia.<sup>93</sup> New amendments to the NGO law, introduced by President Medvedev on 17 July 2009<sup>94</sup> somewhat ease registration and reporting procedures and reduce the number of regular checkups for a single category of NGOs, namely those that do not require a membership fee.<sup>95</sup> However, more comprehensive amendments are needed to ensure compliance with Articles 19 and 22 ICCPR. The recent police search of the Kazan Human Rights Centre,<sup>96</sup> and the prosecution of the Novorossiisk NGO, the Committee for Human Rights,<sup>97</sup> both of which took place after the NGO amendments had been introduced, illustrates the continuing problems NGOs are facing.

A further cause for concern is a proposed new law, introduced to the State Duma in December 2008, which would broaden the definitions of treason and espionage in the Russian Criminal Code.<sup>98</sup> The bill would define treason to include damaging the constitutional order, sovereignty, territorial and state integrity of Russia.<sup>99</sup> 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.<sup>100</sup> These expanded definitions have considerable potential to restrict and inhibit the work of human rights defenders, in particular where they co-operate with inter-governmental or international non-governmental organisations, and would be likely to lead to arbitrary and disproportionate interferences with the exercise of freedom of expression and freedom association.

**The Human Rights Committee should recommend that the State party:**

- **introduce amending legislation to repair the potential and actual adverse impact of the extremism and NGO laws on the enjoyment of freedom of expression, assembly and association of human rights defenders;**
- **abandon proposals to expand the definitions of treason and espionage, in light of the potential of their adoption to lead to an undermining of these rights.**

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<sup>93</sup> Ibid, Article 2 amending Article 21 of the Amending Article 21 of the 1992 law; Article 3 amending Article 13 1992 law.

<sup>94</sup> Radio Free Europe, Russia's Medvedev Acts To Relax NGO Laws, June 30, 2009, [http://www.rferl.org/content/Russias\\_Medvedev\\_Acts\\_To\\_Relax\\_NGO\\_Laws/1756685.html](http://www.rferl.org/content/Russias_Medvedev_Acts_To_Relax_NGO_Laws/1756685.html)

<sup>95</sup> Federal Law of the Russian Federation on Amendments to the Federal Law on Non-Governmental Organizations of 17.072009 N170-FZ <<http://document.kremlin.ru/doc.asp?ID=053597>>

<sup>96</sup> Kazan state bodies against human rights defenders, Human Rights in Russia, < <http://hro.org/node/6141>>

<sup>97</sup> **www.rferl.org**, *Russian Prosecutors Seek Rights Group Closure, 12 September 2009*

<sup>98</sup> *Bill On modification of separate legislative acts of the Russian Federation concerning counter-terrorism*; [www.hro1.org](http://www.hro1.org), *Russian Duma set to extend "spying" articles in the criminal code*, 17 December 2008.

<sup>99</sup> Ibid, Article 275

<sup>100</sup> Ibid, Article 276

## 5. 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 human rights obligations and the rule of law, including the absolute prohibition on *refoulement* to face a real risk of torture and ill-treatment 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.<sup>101</sup> 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*.<sup>102</sup>

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.<sup>103</sup> Nevertheless, many such transfers have been undertaken, 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.<sup>104</sup> In several cases, suspects whose extradition has been refused have shortly afterwards been abducted and transferred,<sup>105</sup> or transferred through immigration expulsion orders of dubious legality.<sup>106</sup> On at

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<sup>101</sup> See further, Declaration of Heads of Member States of Shanghai Cooperation Organisation, section III, 05.07.2005.

<sup>102</sup> Article 7 ICCPR, General Comment No.20, 10/3/92, para.9

<sup>103</sup> *Ismoilov v Russia*, App. no. 2947/06; *Ryabikin v Russia*, App No.8320/04.

<sup>104</sup> 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>.

<sup>105</sup> ECHR communicated case *Iskandarov v Russia*, App. No.171854/05, 4/6/2008; 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

<sup>106</sup> *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

least one occasion a transfer has been made in defiance of interim measures prescribed by the ECtHR.<sup>107</sup>

**The Human Rights Committee should recommend that, in extraditions or other transfers, the State party scrupulously respect the right to *non-refoulement* where there is a real risk of torture or other cruel, inhuman or degrading treatment or other serious violation of human rights, and ensure that detentions and transfers of comply with the right to liberty and security of the person.**

## **7. 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,<sup>108</sup> as well as the refusal to allow the Special Rapporteur on Torture to visit the North Caucasus during his 2006 visit.<sup>109</sup> Following Natalya Estemirova's death, the Russian authorities should promptly facilitate full access to Russia of the relevant UN special procedures, including the Special Rapporteur on the situation of Human Rights Defenders, and the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, both of whom have had requests for visits outstanding for some time. The government should give further positive consideration to the request of seven of the special procedures to undertake a joint visit to assist the authorities in their investigations into the series of killings of human rights defenders.

**The Human Rights Committee should recommend that the State party improve co-operation with UN special procedures, and in particular respond positively to requests for visits by Special Procedures with special relevance to the situation of human rights defenders in Chechnya.**

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applicant was transferred on an expulsion order following a court hearing at which neither the applicant nor his lawyer were present.

<sup>107</sup> *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.

<sup>108</sup> 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.

<sup>109</sup> 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.