

**RUSSIAN
FEDERATION:
BRIEFING TO
COMMITTEE
AGAINST
TORTURE**

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**AMNESTY
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1. GENERAL BACKGROUND

Amnesty International receives regular reports of the use of torture and other cruel, inhuman or degrading ill-treatment ('other ill-treatment') in pre-trial detention facilities and correctional institutions by police and other law enforcement agencies from across the Russian Federation; in addition, some allegations relate to unofficial or unacknowledged places of detention, in particular in the North Caucasus.

The Russian Federation has made some progress following the Committee against Torture's (the Committee) previous consideration of the Russian Federation's implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention against Torture) in 2007. However, a number of the recommendations by the Committee and other human rights bodies have not been implemented. The practice of torture and other ill-treatment remains widespread, as evidenced by the cases and practices documented by a number of Russian non-governmental organizations (NGOs). Overall, little progress has been made to combat and eradicate this practice. Ongoing impunity for torture and other ill-treatment remains a key issue in Russia.

As Amnesty International highlighted in its previous submission to the Committee (AI Index: EUR 46/039/2006), state officials are implicated in acts of torture or other ill-treatment across the Russian Federation as a whole, or in providing impunity for such acts. The organization is also aware that these violations are particularly acute in the North Caucasus, following its recent research into human rights violations in the context of the fight against terrorism and armed groups in the North Caucasus undertaken in the course of a number of visits to the region in 2010 – 2012. Thus, Amnesty International's recent report which looks at the Republic of Ingushetia as a case study representative of the wider region and offers analysis of some of the methods and approaches used by law enforcement agencies in that context, indicates that torture and other ill-treatment is a common phenomenon in the North Caucasus.¹ The complex and opaque structures of the organizations carrying out security operations in the North Caucasus, their lack of accountability, and the secrecy that surrounds such operations allow for a context in which it is easy to commit human rights violations, with perpetrators benefiting from high levels of impunity. This submission sets out below the existing safeguards against torture in the Russian legal system, their shortcomings, as well as some of the methods used by law enforcement officials to circumvent these safeguards, and some key features of the criminal justice proceedings which do not allow the effective implementation on the ban on the exclusion of evidence obtained under torture from criminal trials. These are supplemented with illustrative cases informed by Amnesty International's recent research in the North Caucasus.

2. POSITIVE DEVELOPMENTS SINCE THE PUBLICATION OF THE COMMITTEE'S PREVIOUS CONCLUDING OBSERVATIONS ON THE RUSSIAN FEDERATION (ARTICLES 11 AND 12)

Russia's criminal justice system has undergone significant reform since the Soviet period. There have continued to be some positive changes in the direction of combating torture and other ill-treatment in recent years, including since the submission of the Fifth periodic state report in December 2010. Russian legislation does currently contain some important procedural and practical safeguards against torture as required under international human rights law and recommended by international human rights mechanisms. However, as explained below, law enforcement agencies circumvent some of these mechanisms in a number of ways.

A notable development, in line with the Committee's Concluding Observations (in particular paragraph 12)², is that both legislative and practical steps have been taken to separate the functions of criminal prosecution and investigation. Thus, until 2011, the Prosecutor's Office was responsible both for investigating suspected serious crimes and prosecuting these in the courts (in 2007 the newly created Investigative Committee carried out the investigation function, however, it remained a sub-division within the Prosecutor's Office). In January 2011, the Investigative Committee was instituted as a stand-alone agency, accountable directly to the President on a par with the Prosecutor's Office.

Furthermore, in April 2012 special departments were established within the Investigative Committee for the specific purpose of investigating crimes allegedly committed by police and other law enforcement officials. This, according to the Investigative Committee's press statement, was in response to an initiative by Russian human rights NGOs which

¹ *Russian Federation: The circle of injustice: Security operations and human rights violations in Ingushetia* (EUR 46/012/2012), which draws its case examples from the Republic of Ingushetia, but its conclusions are applicable across the North Caucasus region. The report is available at: <http://amnesty.org/en/library/info/EUR46/012/2012/en>.

² UN Committee Against Torture, *Conclusions and recommendations of the Committee against Torture: Russian Federation*, 6 February 2007, CAT/C/RUS/CO/4, available at <http://www.unhcr.org/refworld/docid/465edff52.html>, last accessed on 25 September 2012.

suggested the creation of such specialized units within the Investigative Committee to increase the impartiality and effectiveness of criminal investigations into allegations of torture and other ill-treatment. Following the initiative, new specialized investigative departments have been created at the level of every Federal District³ as well as, separately, in Moscow, in the Moscow Region, and in St. Petersburg, and at the central apparatus of the Investigative Committee.⁴

This initiative could lead to real progress in combating impunity for human rights violations, including torture and other ill-treatment. However, the effectiveness of this measure still remains to be seen. There are just three members of staff in every newly created department in each Federal District, and ten members of staff in each of the departments in Moscow, Moscow Region and St. Petersburg respectively. As this stage it seems that this initiative has not been provided with resources and capacity required to address the enormity of the task facing each of the newly created departments and in Russia as a whole. There are other problems, in that at the moment the Investigative Committee has not indicated publicly whether there are any clear and exhaustive criteria according to which specific cases are referred to the newly created departments for consideration and in what circumstances. Considering the above, the specialized investigative departments have some significant obstacles in their way to be addressed before they can begin effectively investigating allegations on an on-going basis, let alone deal with any past cases.

In paragraph 9(c) of its Concluding Observations, the Committee called on the Russian Federation to “ensur[e] regular, independent, unannounced and unrestricted visits to all places of detention... [and] facilitate visits by independent monitors, such as independent non-governmental organizations”. On 10 June 2008, the new Federal Law ‘On Public Control Regarding Respect for Human Rights in Places of Custody and on Assistance to Persons in Custody’ was introduced.⁵ It facilitated the creation of local Public Monitoring Commissions throughout the Russian Federation as a mechanism for independent monitoring of places of custody.

The effectiveness of this mechanism has varied across the Russian Federation since its establishment, largely depending on the quality and independence of the specific Commission members carrying out the monitoring visits. In a number of places, particularly where these have included experts from a number of human rights organizations known for their professionalism and independence, the commissions have proven effective in uncovering some evidence of torture or other ill-treatment.⁶ The law requires the Public Monitoring Commission to inform the relevant penitentiary authorities of the specific facilities to be visited and the time of visit, but its members require no further special permissions for such visits. However, the law requires that meetings between the visiting commissioners and the inmates take place in the presence of members of relevant custodial administration. The Public Monitoring Commission does not have any special investigative powers. Accordingly, should it discover any violations it has to convey its findings to the Prosecutor’s Office and the Investigative Committee for follow up and investigation.

3. PROHIBITION OF THE USE OF TORTURE IN LAW AND ITS DEFINITION (ARTICLES 1 AND 16)

The use of torture and other ill-treatment is prohibited under Russian law, including by the Constitution (Article 21), the Criminal Code (Article 117), the Federal Law ‘On Police’ (Article 5(2)) as well as other legislation. The latter law has been passed since the publications of the Committee’s Concluding Observations on the Russian Federation in 2007. However, the legal definition of torture contained in these provisions is vague and inconsistent with article 1 of the Convention. Thus, Article 117 of the Criminal Code speaks of *istyazanie* (torture, torment) which it defines as an action intended to inflict suffering, physical or mental, including by systematic beatings, and mentions the use of

³ There are eight Federal Districts in total, between them encompassing the whole of the Russian Federation.

⁴ The text of the respective Decree is available on the Investigative Committee’s website: <http://www.sledcom.ru/upload/iblock/a4c/a4cdc6b6dc00679897197909e1682a3d.pdf>, last accessed on 25 September 2012.

⁵ The text of the Law is available at http://www.president-sovet.ru/structure/group_10/materials/federal_law/index.php, last accessed on 25 September 2012.

⁶ The effectiveness of many Public Monitoring Commissions across Russia is likely to be significantly affected when the newly adopted Federal Law ‘On Introducing Changes to Certain Pieces of Legislation of the Russian Federation as Regards Regulation of Activities of Non-Commercial Organizations Performing the Functions of Foreign Agents’ comes into force in November 2012. The law is expected to lead to the reduction of the number of independent non-governmental organizations, as well as the reduction of the capacity among those that will continue to exist, which will result in the loss of some valuable independent experts currently serving in these Commissions (which is an unpaid role). For more information on how this new piece of legislation will affect the Russian civil society and its capacity to deliver some key services to the Russian public see Amnesty International, ‘Russian Federation: Freedom of Association under a New Attack’ (EUR 46/029/2012), Public Statement, 13 July 2012, available at <http://www.amnesty.org/en/library/info/EUR46/029/2012/en>.

pytka (torture) as an aggravating circumstance. However, in the definition of *pytka* contained in a commentary to this Article and defined as “infliction of physical or mental suffering in order to extract testimony or compel other actions contrary to the person’s will, as well as for punishment and other purposes” no reference is made to the role played by a public official or other person acting in an official capacity in the act of torture, directly or by consent or acquiescence. Furthermore, importantly, Russian law contains no definition of other ill-treatment and no prohibition of the same, where it falls short of torture.

4. SAFEGUARDS AGAINST TORTURE OF DETAINEES ENVISAGED IN THE RUSSIAN CRIMINAL JUSTICE SYSTEM (ARTICLES 2, 13 AND 15)

Russian law and procedures do provide for a number of important safeguards against torture and other ill-treatment. These relate to the procedural rules governing arrest and detention of individuals, define limits of the powers possessed by and impose certain obligations on state law enforcement officials, grant important procedural rights to individuals in custody, and stipulate that evidence extracted under torture is inadmissible in Russian courts.

Thus, the Russian Code of Criminal Procedure limits the period of detention of persons suspected of involvement in a serious crime to 48 hours. Any further detention beyond 48 hours must be authorised by a judge in their presence, which can be either a maximum detention in police custody of up to 72 hours (*zaderzhanie*) or placement (*zaklyuchenie pod strazhu*) in a pre-trial detention facility (SIZO) which is administered by the Federal Service for the Execution of Punishments, penitentiary authorities which are part of the Ministry of Justice. The overall pre-trial period of detention of persons under criminal investigation must not exceed two months, although a court may extend this period, including by over six months for persons accused of serious and very serious crimes, and up to 18 months in ‘exceptional cases’.⁷

The Russian law mandates that the detainees’ procedural rights must be explained to them at the beginning of their detention, and within three hours of the arrest the detaining official must draw a protocol. This document must state, among other things, the reasons for the detention, and includes a clause to confirm that the relevant person’s rights have been explained to them.⁸ Within 12 hours of the arrest, the detainee’s family must be informed of their detention, and the official questioning must take place within 24 hours.⁹ The detainee is entitled to have immediate access to legal assistance, including a confidential two hour meeting with a lawyer prior to the first questioning, and the presence of a lawyer during any questioning or other investigative procedure throughout the whole investigation.¹⁰ The lawyer can be chosen and hired privately by the detainee or their family, or provided by the state free of charge (*advokat po naznacheniyu* – state-assigned lawyer).¹¹ Any written statement obtained from the detainee will be inadmissible as evidence against them as defendant in court unless the defendant is confirming it in court in person, or unless it has been previously signed in the presence of a defence lawyer.¹² During any period of the detention, the detainee can request any number of meetings with the lawyer, and the lawyer must be granted unobstructed access by the penitentiary administration and provided conditions for a confidential meeting.¹³

It is a legal requirement that the detainee is physically examined at the time of admission into an official place of custody.¹⁴ Their physical condition must be described in the register, with all pre-existing injuries documented. The detainee is also entitled to be examined by a medical professional without any delay (*bezotlagatelno*) if they request this in connection with a health concern or injury, and to receive a copy of the medical report.¹⁵

Russian law gives an exhaustive list of which government institutions are authorised to detain an individual in their

⁷ Code of Criminal Procedure of the Russian Federation, Articles 94 and 109.

⁸ *Ibid.*, Article 92.

⁹ *Ibid.*, Articles 96(1) and 46(2).

¹⁰ *Ibid.*, Articles 49, 92(4) and 16.

¹¹ *Ibid.*, Article 47.4(8).

¹² *Ibid.*, Article 75.2(1).

¹³ *Ibid.*, Article 47.4(9)

¹⁴ E.g., Federal Law ‘On Police’, Article 14(16).

¹⁵ Federal Law ‘On Custody of Persons Suspected of or Charged with Criminal Acts’, Article 24.

custody as a suspect in a criminal case.¹⁶ These include the public security police (for up to 48 hours) and the Federal Service for the Execution of Punishments (FSIN), but exclude other branches of the police (for example, the Centre for Combating Extremism of the Ministry of the Interior), the Investigative Committee and the Federal Security Service (FSB) proper (as opposed to the FSB's border protection organs which have their own temporary detention facilities too).

5. SHORTCOMINGS IN THE EXISTING PRACTICE: SAFEGUARDS FLOUTED AND CIRCUMVENTED (ARTICLES 1, 2, 10, 12, 15 AND 16)

Despite the existence in the law of the above safeguards, Amnesty International continues to receive regular and credible reports of torture and other ill-treatment from across the Russian Federation, particularly from the North Caucasus. The organization conducted further research on a number of these cases in the course of its missions to the North Caucasus in recent years, and has further documented a number of cases of torture and other ill-treatment in its June 2012 report on the Republic of Ingushetia.¹⁷ The report examines the situation in Ingushetia as a case study into the structural mechanisms which underpin human rights violations committed by law enforcement officials in the context of combating armed groups, and contribute to a high degree of impunity for crimes under international law, including torture and enforced disappearances. While Ingushetia was chosen as a case study to illustrate issues that are common to the region, and Amnesty International is aware that similar considerations apply across the North Caucasus. Clearly therefore, the above laws are not very effective in practice, particularly but not exclusively in the North Caucasus. Amnesty International has identified the following ways in which perpetrators of torture and other ill-treatment have been able to flout and circumvent the above safeguards.

5.1 INDIVIDUALS PLACED OUTSIDE THE PROTECTION OF THE LAW: SECRET AND UNACKNOWLEDGED DETENTION, ENFORCED DISAPPEARANCE

Amnesty International's research suggests that the practice of extraction of testimonies and "confessions" from criminal suspects by means of torture and other ill-treatment is widespread in the North Caucasus. The organization's delegates spoke with 30 criminal lawyers representing all of the North Caucasus republics in summer 2012. Nearly all of them had worked on more than one occasion with clients who had been subjected to torture or other ill-treatment, and all have been aware of the use of this practice by law enforcement officials in their respective republics.

The most common way law enforcement officials use to circumvent the above-mentioned safeguards is by placing an individual outside the protection of the law. Amnesty International is aware of a number of cases where detainees were held unacknowledged, their whereabouts and fate concealed by the authorities. This practice is employed sometimes as a temporary or a permanent measure, with the individual later "reappearing" – usually in official places of custody – after a period of secret, unacknowledged detention, or the individual may be forcibly disappeared for an indefinite period. Secret and unacknowledged detention may also amount to enforced disappearance. Unacknowledged detention, including secret detention, may also *per se* constitute torture or other cruel, inhuman and degrading treatment. It may also be used to facilitate torture and other cruel, inhuman and degrading treatment.

Amnesty International has received repeated reports from across the North Caucasus alleging that members of law enforcement agencies subject individuals to secret and unacknowledged detention. The perpetrators typically act incognito, wearing unidentifiable uniforms without any insignia and covering their faces, and refuse to introduce themselves or explain which agency they belong to. The victim may be taken from his/her home or abducted in the open air, and is usually blindfolded, sometimes for the whole duration of their captivity. Some are later released without charges, and are reportedly usually warned by their captors against launching any complaints, following which they usually avoid publicity fearing reprisals from the perpetrators against themselves or their relatives and prefer that details of their cases are not mentioned.

RUSLAN POSHEV, resident of the village of Dongaron, North Ossetia, is suspected to be a victim of an enforced disappearance on 14 May 2011. He was last seen that day with friends in the town of Karabulak in neighbouring Ingushetia after which all contact with him was lost. The family reported his disappearance to the authorities on the

¹⁶ Ibid., Article 7.

¹⁷ *Russian Federation: The circle of injustice: Security operations and human rights violations in Ingushetia* (EUR 46/012/2012), which draws its case examples from the Republic of Ingushetia, but its conclusions are applicable across the North Caucasus region. Some of the cases cited in this briefing are presented in greater detail in the report.

same day. On the same day, but before they approached the authorities, the house where Poshev lived had been searched by masked armed officials from a law enforcement agency, the identity of which remains unknown to the family. One of them said that Ruslan Poshev was suspected of membership of an illegal armed group, but gave no further explanation. Ruslan Poshev's car was later found abandoned, reportedly with a big dent in the front passenger door and signs of struggle, such as broken seats, inside. An official investigation into Ruslan Poshev's disappearance was opened only on 30 May 2011, but his fate and whereabouts remain unknown.

In some cases, the individuals subjected to temporary secret and unacknowledged detention are later taken to officially recognized places of detention. They frequently allege the use of torture and other ill-treatment during their secret detention; rarely are the secret detention and the allegations of torture and other ill-treatment acknowledged or effectively investigated by the authorities. In many of the cases reported to Amnesty International, the official record of detention reflects only detention in official custody, and any injuries documented at this moment are often recorded as pre-dating being taken into custody.

MURAT BEDZHIEV went missing in Tynyauz, Kabardino-Balkaria, on 25 June 2011. His family immediately reported his disappearance to the authorities and repeatedly contacted the local Prosecutor's Office and Investigation Committee. For two days, the authorities reportedly denied any knowledge of his arrest and the fact of his custody. During this period, the family also contracted a criminal lawyer who, similarly, was denied any information on Murat Bedzhiev's whereabouts until he was confirmed in official custody on 27 June 2011. Allegedly, during this period he was subjected to torture and other ill-treatment by law enforcement officials. A report from the local hospital confirmed that an ambulance was called three times to the detention centre to see him between 27 and 28 June 2011 and documented bruising and serious head injuries.

Those victims of alleged temporary secret and unacknowledged detention by law enforcement officials in the North Caucasus who agree to speak about their experience, often on conditions of confidentiality, invariably maintain that they were subjected to torture and other ill-treatment. Allegations include being blindfolded during the whole or for a significant period of their captivity (usually with a black plastic bag fixed with sticky tape put around the head at eye level), being transported in a painful and humiliating manner (for example, being placed inside a car boot¹⁸), being tied up or handcuffed and beaten, often by a group of men. Allegations of electrocution are very common. Some victims never find out about the place of their captivity; in rare cases such as the one below, some do.

ZELIMKHAN CHITIGOV was taken from his mother's home in Karabulak, Ingushetia, by a group of 30-40 armed men at around 7.30 am on 27 April 2010, without explanation. She reported his abduction to the authorities, but had no information about his whereabouts until after he was "officially" taken into custody by police at Karabulak town police station on 30 April 2010 when the protocol of his detention was drawn. Zelimkhan Chitigov told Amnesty International that he had been blindfolded for most of his secret detention, during which he was repeatedly severely beaten, kicked and punched by groups of men, electrocuted, with one electrode placed in his mouth, had his toe-nails pulled out and skin twisted with pliers, and suspended on metal bars. He claims he was being forced to confess to bombing the police station, and saw two other captives, both suffering from severe injuries, who were being forced to testify against him (one of them, Aslan Pliev, later retracted his testimony against Zelimkhan Chitigov, claiming it had been given under torture). When not being subjected to torture and interrogation, and at night, Zelimkhan was left in small room. From there, he managed to text his mother from his mobile which was still in his pocket. He pleaded for help but could not explain where he was held. Subsequently, the mobile billing reportedly helped identify location as the Centre for Combating Extremism of the Ministry of the Interior in Nazran.

Two former senior police officials whose subordinates were involved in Zelimkhan Chitigov's enforced disappearance are currently awaiting the verdict on a number of criminal charges, including, in the case of one of them, abuse of authority in relation to Zelimkhan Chitigov. No other officials have been identified as perpetrators in the case of

¹⁸ Although such practice is clearly illegal, there is strong evidence – in addition to narratives by victims and eyewitnesses narratives – confirming its use. Thus, for example, the arrest of Magomed, Murad and Berd Khazbievs by armed police for an administrative offence at their home in Nazran, Ingushetia, on 23 March 2011, was captured on CCTV cameras installed at the house. Amnesty International has seen this footage, which shows someone being carried out of the gates by two uniformed masked men and thrown into the boot of a black saloon car parked in the street.

Zelimkhan Chitigov, and the investigator was reportedly denied entry to the Centre for Combating Extremism while investigating the case.

5.2. INCOMMUNICADO DETENTION AND THE DENIAL OF ACCESS TO LAWYERS OF CHOICE

Some allegations of the use of torture by law enforcement officials in the North Caucasus concern cases where individuals are held in official places of detention which are known to their families, but are denied any communication with relatives or legal representatives.

BESLAN TSECHOEV was taken together with his brother Adam by a unit of masked police from their family in the village of Sagopshi, Ingushetia, to the local police station in Malgobek on 8 June 2010. Their family contracted a lawyer who was denied access to the brothers. Members of the local Public Monitoring Commission who also attempted to visit them were also denied access. Concerned for the Tsechoev brothers' safety, their relatives organized a vigil at the police station's gates. According to the family, at 8.35pm on 8 June, an ambulance arrived at the station, then again on 11 June, and on at least one other occasion. A copy of the medical report issued by the first ambulance crew was obtained by the family's lawyer. It stated that Beslan Tsechoev had severe head and back injuries. However, reportedly the medics subsequently refused to share with the lawyer any of their reports, allegedly because of threats they had received from police. The detained brothers were not permitted any visits aside from those of the ambulance crews until 14 June, when the Ingushetian Human Rights Ombudsman visited them. The Ombudsman took photographs of Beslan Tsechoev's injuries. The Tsechoevs' lawyer, who was later also allowed to visit the brothers, requested that the authorities transfer Beslan to a hospital for a full medical examination and treatment, but was refused. Adam Tsechoev was released on 17 June 2010, but Beslan Tsechoev remained in custody until December 2010 when he too, was released without charges.

Incommunicado detention in the North Caucasus, which typically lasts several hours but may be longer, is allegedly used to apply pressure on suspects forcing them to agree to sign "confessions" later in the presence of a lawyer, or have the relevant statements signed in presence of reportedly unscrupulous state-assigned lawyers who ignore the alleged use of unlawful means of interrogation and fail to take any actions to document the detainee's injuries or collect any other evidence of torture and other ill-treatment. The existing regulations require that the local Bar Association (there is one in every North Caucasus republic) assign a lawyer to act on behalf of a criminal suspect in accordance with its internal roster, in cases where a lawyer is to be provided by the state. In practice however, these procedures are not followed very frequently. Often, the investigator will reportedly call a specific lawyer they know and who they may consider unlikely to raise concerns about the use of unlawful means of interrogation and other violations. A privately hired lawyer whom the detainee would trust, and therefore prefer, can join the proceedings from any moment – but not until the family is informed of the suspect's detention and can contract such a lawyer, which is often only after the suspect's first interrogation in presence of a state-assigned lawyer. Thus, the suspect's formal entitlement to a legal defender of his or her choice is tacitly observed, with a state-appointed lawyer more favourable to the interrogating authorities often appointed in the interim, without it serving as an effective safeguard against torture and other ill-treatment.

Amnesty International interviewed 30 criminal lawyers in Chechnya, Dagestan, Ingushetia, Kabardino-Balkaria, Karachaevo-Cherkessia and North Ossetia in June 2012. Most complained that when privately contracted to defend a client suspected of membership of an armed group or related crimes, they have to take up an already ongoing case in which the client has already signed a self-incriminating statement earlier. This statement would have been signed by the suspect in presence of a state-assigned lawyer who would have witnessed, and ignored, the use of torture and other ill-treatment used to extract a confession. Many of the lawyers Amnesty International interviewed also complained of occasions when they were being denied access to their clients in detention under various pretexts. These included, for example, being told by the investigator or a member of the penitentiary administration that the client had refused their services and preferred the state-assigned lawyer; misinforming the lawyer about the client's whereabouts (by claiming that they are at another detention facility, sometimes without specifying which); or demanding to see special permissions to see the client (which are not required by law).

ISSA KHASHAGULGOV was detained on 25 September 2010 as a suspect in connection with an earlier suicide bombing in Vladikavkaz, North Ossetia. For two days, the family had no news of his whereabouts and reported him as missing to the authorities. On 27 September, they were informed that Issa Khashagulgov was being held at Lefortovo pre-trial detention centre (SIZO) in Moscow. In early April 2011, his lawyers in Moscow were told by the penitentiary authorities

that he had been transferred to Vladikavkaz, but days later were informed that he was still in Moscow. However, when one of his lawyers tried to see him in Lefortovo he was reportedly denied a meeting. Journalists contacted the SIZO in Vladikavkaz but were told he was not there. Only on 14 April 2011 one of Issa Khashagulgov's lawyers was able to contact him in Vladikavkaz. Allegedly, he was subjected to torture and other ill-treatment during both of these periods. On the night of 19 January 2012, according to the information Issa Khashagulgov's family reportedly received via one of his lawyers, he was taken out of his cell to an unknown location and beaten and threatened with further violence if he refused to cooperate with the investigation. Following this incident, Issa Khashagulgov reportedly requested a medical examination to document his injuries but his request was ignored. Reportedly, on 6, 7 and 8 February 2012, his lawyers were repeatedly refused meetings with him while he was moved from one detention facility in Vladikavkaz to another during the day and returned back during the night. The transfer on all these days was said to have taken place without his lawyers being notified. Furthermore, the administration running the second facility denied his lawyers access to Issa Khashagulgov without the investigator's express written permission.

5.3. THE FAILURE TO EXCLUDE EVIDENCE OBTAINED UNDER TORTURE FROM CRIMINAL TRIALS

Any evidence unlawfully obtained by the investigation, which includes testimony extracted under torture or other ill-treatment, the judge must declare inadmissible, as mandated by the Russian Code of Criminal Procedure. The judge has the authority to examine the relevant evidence in an attempt to establish, amongst other things, whether or not torture and other ill-treatment have been used. For this, the judge can question possible witnesses, request expert examinations and additional information as appropriate, etc, although the judge cannot, in the course of the trial, conduct a further judicial inquiry into another suspected crime *per se*, such as allegations of the use of torture and other ill-treatment. In practice, the judge will not assume the position that torture or other ill-treatment has been used unless the relevant allegations have been separately investigated and confirmed. Thus, the onus for dealing with allegations made in court about the use of torture and other ill-treatment is on the prosecution and investigation services (which in the context of the criminal court hearing will not be impartial as they will often be the authorities that are implicated in the allegations, or are involved in presenting the evidence that is alleged to have been obtained by torture or other ill-treatment). The judge cannot compel the opening of a criminal investigation by the Investigative Committee. However, the judge can (although is not obliged to) issue a special order (*chastnoe opredelenie*) that the alleged violations be examined by the Prosecutor's Office or the Investigative Committee with a view to opening such a case, or that the apparent shortcomings of such an earlier examination be addressed. The judge can also adjourn the hearing until the court receives the requested information.

'THE CASE OF THE TWELVE'

On 2 February 2011, the Stavropol Regional Court passed guilty verdicts in the high-profile case in which twelve co-defendants were convicted in connection with the attack on the Republic of Ingushetia on the night of 21-22 June 2004. Most were sentenced to between 20 years and life in prison, and three to shorter sentences. Defence lawyers had repeatedly complained that the court had failed to consider allegations about the use of torture and other ill-treatment and have relevant evidence declared inadmissible. The allegations of torture were not investigated, and the defendants' relevant applications in court were dismissed in spite of medical reports and other strong evidence presented to substantiate them.

Thus, the lawyer of Murat Esmurziev stated in court that a month after his client's arrest in September 2005, Murat Esmurziev had been forced to sign a request to replace the lawyer of his choice with a state-assigned lawyer. It is alleged that the state-assigned lawyer turned a blind eye to, and did nothing regarding, the use of unlawful interrogation techniques involving beatings and threats. The same day this state-assigned lawyer took up the case, Murat Esmurziev was taken to hospital for emergency surgical treatment after an interrogation. In November 2005 Esmurziev's family hired a new lawyer for him, who requested an investigation by the authorities into the allegations of his torture, but the request was declined. The family also wrote to the Prosecutor General's Office, from where the complaint was passed down to the local prosecutors, who in turn refused to open a criminal investigation into these allegations. Subsequently Murat Esmurziev complained in court of the use of torture, but to no effect. He was found guilty of several charges and sentenced to 25 years in prison. He and others launched appeals, but on 23 September 2011 the Supreme Court of the Russian Federation upheld the earlier court's decision.

Defendants standing trial in courts in the North Caucasus and elsewhere in Russia for their alleged involvement in armed groups' activities often allege in court that torture has been used to extract written self-incriminating statements from them and incriminating statements against others. One Ingushetian judge interviewed by Amnesty

International maintained that allegations of torture are frequently employed by defendants in such cases as a defence tactic. There are indications that this is a view held by many judges, making them sceptical about such allegations.

There have only been a small number of cases in the North Caucasus in recent years that have resulted in acquittals of individuals suspected of membership of armed groups and related activities. Evidence in such cases is very rarely, if ever, declared inadmissible on the grounds that it has been extracted under torture. The acquittals have all been in cases in which the defence has been exceptionally effective in exposing the weakness of the prosecution's case, making it too manifest to ignore. Consequently, the rate of conviction in such cases is very high. Reportedly, most of the convictions are routinely secured almost entirely on the basis of incriminating testimony of the defendants themselves or of other co-defendants in the case, often with strong grounds to believe that it has been extracted under torture. It is also apparent that judges are under considerable pressure to deliver convictions in trials of alleged members of armed groups.

In late 2009, the President of Ingushetia Yunus-Bek Yevkurov made several strong public statements in which he accused Ingushetian judges of corruption and leniency towards criminals for passing down acquittals or mild sentences, and blamed some "unscrupulous judges" for undermining the efforts to improve the overall situation in the Republic. This has led to a series of media reports exposing the depth of a conflict between the President and the Republic's senior judges, and several mutual public accusations. In other North Caucasus republics, no similar conflicts have ever been publicly exposed, although the judges may be facing similar political pressures throughout the region.

5.4. THE LACK OF INDEPENDENCE OF INVESTIGATORS AND PROSECUTORS AND THE RESULTING IMPUNITY

The cases of effective investigation and successful prosecutions of cases of torture and other ill-treatment in the Russian Federation are rare. They are particularly rare in the North Caucasus where Amnesty International is only aware of a handful of such cases to date which have resulted in the conviction of a perpetrator, and only one such case in 2012. Such cases are greatly outnumbered by reports of credible allegations that have not been impartially and effectively investigated. Amnesty International has raised a number of such cases in discussions with Russian officials. In those meetings and communications in which the Russian authorities were prepared to comment on specific cases, either the allegations of the use of unlawful force, torture or other ill-treatment were denied either as false or unconfirmed, or the use of force by law enforcement and penitentiary officials was explained as lawful and necessary to restrain a violent detainee.

Not all allegations of the use of torture and other ill-treatment are equally compelling, although there are regular reports from across the Russian Federation which are substantiated by strong evidence, such as independent medical reports for example. There are, undoubtedly, some objective difficulties in investigating such allegations effectively. Among them is the lack of independent witnesses for example. Moreover, in the North Caucasus these are compounded by the multiple levels of secrecy which surround the activities of law enforcement agencies, and the so-called covert operative and search activities (*osuschestvlyаемая негласно оперативно-розыскная деятельность*) that they carry out. Facts relating to such activities are difficult to prove, and consequently allegations of torture and other ill-treatment and other human rights violations are more difficult to investigate. Officers frequently resort to acting incognito (wearing facemasks or balaclavas and unidentifiable uniform stripped of all insignia) even in the course of some relatively ordinary policing operations. As a direct result, the identity of individual officials involved, or even of the units they belong to and the agencies they represent, is difficult to establish for the victims and eyewitnesses. This is also often cited by official investigators as an obstacle for identifying the perpetrators – sometimes this claim is more credible, at other times it appears just an excuse not to pursue an investigation. When the investigation authorities repeatedly fail to demonstrate that they are undertaking the minimum reasonable efforts to try to identify and prosecute the suspected perpetrators, it is difficult to avoid the conclusion that the authorities lack the will to carry out effective and impartial investigations of the allegations of torture and other ill-treatment.

'THE CASE OF THE ELEVEN'

On 31 May 2011, 11 young men, all of them co-defendants in a one case, were brought from a pre-trial detention centre in Piatigorsk, Stavropol Region, to Nazran for a pre-trial court hearing. During the hearing on 1 June, they were seen in court by their relatives, and then taken back to Piatigorsk. The relatives of some of these men filed official complaints that the detainees had been severely beaten upon arrival at the Ingushetian Ministry of the Interior temporary detention facility in Nazran. Following these complaints, on 1 June 2011 the detainees were visited by

members of the local Public Monitoring Commission. They were told by the detainees that upon arrival at the Ministry of the Interior compound they had been ordered one by one out of the detainee transport vehicle and into the courtyard where they were ordered to kneel and were beaten with batons and metal rods by masked uniformed men without insignia. Reportedly, the police officials who transported them and members of staff of the detention facility did not interfere until the beating stopped. Then the detainees were admitted into the detention facility, with their injuries documented as pre-existing. Several reportedly required medical treatment, and five had to be taken to a hospital in Nazran. The visiting members of the Public Monitoring Commission saw some of their injuries, including bruises and cuts, as well as records of these injuries in the facility's logbook. The Human Rights Ombudsman has subsequently written to the Prosecutor of Ingushetia asking to examine these allegations. A criminal case was reportedly opened under Article 286 of the Criminal Code (abuse of official authority) in July 2011, and later suspended due to the failure to establish the identity of the perpetrators.

Amnesty International is concerned that prosecutors and investigators, particularly at the local level (at which virtually all the complaints about human rights violations by law enforcement officials are dealt with), often lack the necessary independence to carry out the thorough and effective investigations into allegations of torture and other ill-treatment, as required under national and international law. Impartiality in terms of conducting checks into or investigation of allegations made against members of other agencies, let alone one's own agency, is problematic. They share, for the most part, the same objectives, including combating crime, not least in relation of the activities of illegal armed groups. It is highly unlikely that these parts of the criminal justice machinery will cooperate in pursuit of this task and at the same time will be prepared to investigate each other in connection with violations alleged to have been committed whilst carrying out other activities, such as combating crime.

The establishment of the special departments within the Investigative Committee for the purpose of investigation of crimes allegedly committed by police and other law enforcement officials is therefore an important first step. However, in order to address impunity for torture and other ill-treatment committed by law enforcement officials, it needs to be adequately resourced and the state authorities must ensure it functions effectively as an independent institution. It must also be reviewed on the basis of its effectiveness in terms of resolving past and new cases of the alleged use of torture and other ill-treatment, in the North Caucasus and the wider Russia.

6. URGENT STEPS THAT NEED TAKING TO COMBAT AND ERADICATE TORTURE

Despite some steps the Russian Federation has taken in recent years towards combating and eliminating torture and other ill-treatment, instances are frequently reported from across the country. Torture and other ill-treatment are still widely practised, with the perpetrators from among law enforcement officials enjoying impunity for their actions. The safeguards against torture of detainees envisaged in the Russian criminal justice system, positive as they are, are regularly flouted and circumvented by officials, particularly those carrying out interrogations. During Amnesty International's recent visits in the North Caucasus, the organization documented a number of cases showing the prevalence of torture and other ill-treatment in the region and demonstrating how the existing safeguards are circumvented. Such practices show how similar methods may be used elsewhere in the Russian Federation unless the following measures are implemented urgently.

Amnesty International has urged the Russian authorities to:

- Fully incorporate the definition of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment into the national laws which prohibit torture and other ill-treatment;
- Acknowledge that the problem of torture and other ill-treatment is not confined to isolated incidents but is widespread, both in the North Caucasus and the wider Russian Federation, and commit to combating such abuses and the impunity associated with it, and to strengthening the accountability of law enforcement agencies;
- Ensure that no person is ever subjected to unlawful, unacknowledged, secret or incommunicado detention, and that the rights of all detainees are respected in all cases, including the right to a lawyer of their choice and to have a family member or other third party notified promptly of their detention;
- Ensure that all allegations of enforced disappearance, unacknowledged, secret and incommunicado detention and torture or other ill-treatment are independently, promptly, impartially and effectively investigated in order to bring the officials responsible to justice;
- Ensure the provision of effective training on the treatment of prisoners and detainees to all law enforcement personnel and officials involved in the custody, interrogation or medical care of detainees or prisoners, including but not limited to making it clear that (i) torture and other ill-treatment are criminal acts; and (ii) they should

refuse to obey an order to carry out torture or other ill-treatment, and should not be punished therefore, and that (iii) they should report incidents to the appropriate authorities where they have reason to believe torture or other ill-treatment may be taking place;

- Ensure that prosecution, investigation and judicial authorities at the local, regional and federal levels take effective steps to ensure that every means within their respective powers is used to examine, promptly, effectively, independently and impartially, allegations of torture and other ill-treatment, and to ensure that no statements or other material or information obtained through torture or other ill-treatment are used in any proceedings, except against a person accused of torture or other ill-treatment as evidence that the statement was made;
- Ensure that judges in particular are issued with clear guidelines regarding examination of the relevant evidence presented by the defence in cases when defendants claim that their earlier statements, including those signed in presence of a lawyer, were obtained by use of torture or other ill-treatment (with a requirement to exclude such statements from evidence if the statement has been so obtained);
- Provide the newly created new departments within the Investigative Committee created for the investigation of crimes allegedly committed by law enforcement officials with adequate resources. Ensure the effectiveness, independence and impartiality of the investigations into allegations of torture and other ill-treatment. Introduce clear guidance and exhaustive criteria for referral of cases to the newly created departments of the Investigative Committee and regularly review their effectiveness.