

8 September 2008

Public

amnesty international

**Russian Federation
Submission to the UN Universal
Periodic Review**

**Fourth session of the UPR Working Group of the
Human Rights Council
February 2009**



Executive summary

In this submission, Amnesty International provides information under sections B, C and D as stipulated in the *General Guidelines for the Preparation of Information under the Universal Periodic Review*.¹

- Under section B, Amnesty International raises concern over gaps in legislation concerning safeguards against torture;
- Section C highlights Amnesty International's concerns about human rights violations in the context of the North Caucasus, pressure against human rights defenders, torture in police custody, violence against women in the family, restrictions in freedom of expression, assembly and association, violent racism, fair trial concerns, and during the conflict in South Ossetia.
- In section D, Amnesty International makes a number of recommendations for action by the government.

¹ Contained in Human Rights Council Decision 6/102, Follow-up to Human Rights Council resolution 5/1, section I adopted 27 September 2007.

Russian Federation

Amnesty International submission to the UN Universal Periodic Review

Fourth session of the UPR Working Group, February 2009

B. Normative and institutional framework of the State

Gaps in legislation concerning safeguards against torture

No one article in the Russian Criminal Code reflects in full the definition of torture in the Convention against Torture and no one article is used to prosecute cases of torture. While Article 117 of the Criminal Code does contain a definition of torture, this does not fully reflect the CAT definition and is not generally used to prosecute torture cases.² State officials are usually prosecuted under Article 286 Parts 2 and 3 (“exceeding official authority”, by state officials (part 2), and with the use or threat of use of violence, and/or with serious consequences (part 3)).

Access to a lawyer and other safeguards

The Criminal Procedure Code guarantees the right of an individual, suspected of a crime or charged with a crime, to the assistance of a lawyer. However, other legislation undermines this guarantee. The internal order regulations for police custody in temporary holding cells (IVS) and for pre-trial detention centres (SIZO) include the concept of “quarantine” which in practice has been cited as a reason for denying a detainee’s access to their defence lawyer. However, the internal order regulations do not give a definition of “quarantine” or the length of time it can be invoked for. Amnesty International is also concerned that Federal Law 144 F-Z “On Operative-Search Activity” (OSA) 1995 has been used to deny suspects and accused persons the right to have their lawyer present during questioning. While there is a general obligation to respect human rights while carrying out activities under the law, including questioning, it is not clear what specific rights an individual has while being questioned by law enforcement officers under the OSA law. In particular, it is not clear from the law if the individual has the right not to consent to such questioning and the right to counsel during such questioning and, if so, how these rights are ensured in practice. In practice, it appears that during such questioning the individual is vulnerable to torture and other ill-treatment.

The 2006 federal law “On counteracting terrorism” fails to make explicitly clear the relation between the Criminal Procedure Code, with all the safeguards involved, and procedures of a counter-terrorist operation. There are general provisions in the law about upholding rights of the suspect and acting in accordance with Russian law; however, the law contains no provision making clear the obligation of the authorities to respect and protect human rights in the context of a counter-terrorist operation.

² “The infliction of physical or mental suffering by means of systematic beating or by any other violent actions, unless this has involved the consequences referred to in Article 111 (intentional infliction of grave injury) or 112 (intentional infliction of medium damage to health) of the Code, shall be punishable by deprivation of liberty for a term of up to three years..... Torture in this Article and in other Articles of this Code shall mean the infliction of physical or mental suffering for the purpose of compelling to give evidence or to commit other actions against a person’s will, as well as for the purpose of punishing, or for other purposes.”

C. Promotion and protection of human rights on the ground

Situation of human rights in the North Caucasus

Russia is failing to honour its obligations under international human rights law to respect and protect the right to life, freedom from torture and other ill-treatment, liberty and security of a person, fair trial and the right to housing in the North Caucasus. Human rights violations such as enforced disappearances, extrajudicial executions, torture and other ill-treatment, and arbitrary arrest and secret detention continue to be reported in the Chechen Republic, Ingushetia, Dagestan and North Ossetia, while impunity for these violations remains entrenched. "Confessions" extracted under torture from those alleged to be members of armed groups have been used as evidence in trials in the North Caucasus which fail to meet international standards of fairness and which result in long-term imprisonment. Abuses are also committed by armed opposition groups, including attacks on civilians, and abductions.

Human rights violations committed by law enforcement officials remain largely unpunished. Amnesty International is concerned that the climate of impunity is deepening in particular in Chechnya, due to victims of human rights abuses justifiably fearing reprisals if they turn to the authorities for redress. For example, Makhmadsalors Masaev, unlike most victims of unlawful detention in Chechnya, sought a criminal investigation into the abuses he had experienced during four months of secret detention, thought to have been at a base in Tsenterei, in 2006/7. He was abducted on 3 August 2008 and there has been no news from him since. Amnesty International is concerned he was detained by Chechen law enforcement officials in order to punish him for seeking redress, and to pressure him to withdraw his complaints. Those from the region submitting cases to the European Court of Human Rights have also face intimidation and harassment.

The number of reported enforced disappearances in Chechnya has decreased, which is to be welcomed. At the same time, however, there is an increasing number of reports of such human rights violations in Dagestan and Ingushetia. Moreover, in Chechnya thousands of individuals suspected of having been subjected to enforced disappearance remain unaccounted for. As far as is known to Amnesty International, only one law enforcement official has been convicted in relation to a case of enforced disappearance in the period under review, and the fate of his victim, Zelimkhan Murdalov, remains unknown. The investigation by the authorities of mass graves lacks systematic procedures and adequate facilities. To Amnesty International's knowledge, no work is currently being done to identify and exhume mass graves, or to match bodies found with the descriptions of missing and disappeared persons given by their relatives.

In Chechnya, internally displaced people, including young children, elderly and disabled people have been forcibly evicted from temporary accommodation centres without adequate consultation and without guaranteed alternative accommodation. When alternative accommodation has been provided, in some cases it has turned out to have disputed ownership, leaving the families vulnerable to eviction.

Human rights defenders, journalists and lawyers working in the North Caucasus

Many human rights defenders, lawyers and journalists working in the North Caucasus have in recent years been subjected to threats, harassment, abuse and on occasion serious human rights violations, such as enforced disappearance or extrajudicial executions.

Such crimes have happened amidst a climate of growing suspicion against human rights defenders and civil society organizations, which have been repeatedly accused by government representatives of supporting extremism or working for foreign secret services. Such accusations have been made without any substantiation of the allegations. Journalists, who publish information critical of government policies in the region, face intimidation by law enforcement officials. Most recently Magomed Evloev, the owner of independent website *Ingushetiya.ru*, was killed in disputed circumstances in police custody in Ingushetia. During recent years - in an increasingly hostile environment for independent human rights defenders and journalists - the law to

combat extremist activities in combination with the new law governing non-governmental organizations (NGOs) has been used to further clamp down on independent civil society organizations.

For example, Amnesty International is concerned about the ongoing investigations against the human rights organization, the Chechen Committee for National Salvation, based in Ingushetia. The organization, which monitors and reports on the situation in the North Caucasus, especially in Chechnya, has been accused of having issued press releases of an "extremist" character, designed to incite hatred between ethnic Chechens and people of other nationalities. The NGO has also undergone numerous burdensome checks by the authorities which appear to amount to administrative harassment. Amnesty International is concerned that the NGO may be targeted solely for publicizing statements perceived to be critical of the authorities.

Amnesty International is similarly concerned about the safety of human rights activists working at MASHR, an NGO which reports on and campaigns against serious human rights violations in Ingushetia, in particular enforced disappearances and abductions.³ Since 2006, MASHR has undergone numerous inspections into its activities by the tax inspectorate, the Federal Registration Service, the Office of the Prosecutor of the Republic and the police. The head of the organization, Magomed Mutsolgov, has received threats because of his human rights work, and believes he has reason to suspect that he and his office are under surveillance. In July 2008, Zurab Tsechoev, who works as the organization's website editor, was arbitrarily detained and badly beaten by men thought to be Russian federal law enforcement officials. He was later hospitalized, with multiple injuries and bruising.

Torture in police custody

Amnesty International continues to receive credible reports about the alleged use of torture or other ill-treatment from regions across the Russian Federation. Alleged victims of such human rights violations have made claims that they were forced to "confess" to a crime under torture. The organization welcomes developments in a number of cases where those found responsible for the torture and other ill-treatment of detained persons have been brought to justice. However, Amnesty International remains concerned that too often such crimes remain unpunished as allegations of torture are not investigated promptly, fully, independently and impartially.

A new structure, the Investigation Committee, established within the office of the Prosecutor General in 2007, is charged with responsibility for criminal investigations. It remains unclear to Amnesty International what impact this change will have, if any, in terms of enhancing the effectiveness of investigations into torture. In at least one case that Amnesty International is monitoring, that of Rasul Kudaev, the Investigation Committee has refused to open an investigation into his alleged torture or other ill-treatment. Rasul Kudaev has been charged with participation in the armed attack on Nalchik in October 2005 and was allegedly tortured and ill-treated during his arrest, and during the several days he was detained at the department of the Organized Crime Squad (UBOP) in Nalchik. Amnesty International has seen photographs, eyewitness testimony and official documents that provide evidence to support these allegations of torture.

Violence against women in the family

Violence against women in the family remains widespread, yet there are no official statistics on the issue, demonstrating a lack of prioritization of the issue. Government support for crisis centres and telephone hotlines is totally inadequate; for the city of Moscow, with nine million inhabitants, there is not one single shelter for women fleeing a violent home. Shelters in other regions are not open to them if they do not have residential registration in that region. No measures under Russian law specifically address violence against women in the family.

³ "Mashr" means "peace" in Ingush

Restrictions on freedom of expression, assembly and association

Amnesty International has become increasingly concerned about the shrinking space for expressing dissenting views, and for independent media and independent NGOs to operate throughout the Russian Federation. The law on NGOs and its implementing regulations are overly burdensome and may have been applied selectively to interfere with the work of independent civil society organizations. While only a limited number of NGOs had to be closed down following the introduction of the law, many more had to devote a substantive amount of time to ensuring their documents were in line with the law. In a number of cases, the requests made of NGOs by the authorities were unjustified and may have violated the right to freedom of association. Additionally, Amnesty International is concerned that the overly broad definition of “extremism” in the law on combating extremist activities has restricted the rights to freedom of expression and association. In at least one case an organization has been wrongfully refused registration, possibly in connection with the law on combating extremist activity, and the law has been used to threaten closure in other cases, seriously hampering organizations’ ability to exercise their rights to freedom of expression and association.

During demonstrations ahead of the 2007 Duma and 2008 presidential elections, the police used excessive force to disperse demonstrators. While there has been some official acknowledgment that the response towards the demonstrators was disproportionate, Amnesty International is not aware of any prosecution or disciplinary measure taken in relation to members of the law enforcement agencies in connection with the excessive use of force.

Amnesty International is also concerned that other groups have been prevented from exercising their right to freedom of assembly. In the last three years, several gay pride or gay rights marches have been banned by the Moscow authorities, without providing an alternative date or location as is required by Russian law.

Violent racism

Amnesty International is aware of an increase in prosecutions recognizing the element of race-hate motivation in cases of attacks, including fatal attacks on members of ethnic minorities or foreigners. At the same time, violent racist attacks continue to occur in Russia with alarming regularity. While some local initiatives have resulted in improved police response, Amnesty International is concerned that overall the authorities are still not doing enough to convincingly challenge racist and xenophobic ideas and ideologies, and have not implemented an effective programme to combat them and crimes committed arising out of them.

Fair trial concerns

Amnesty International is concerned about the ongoing failure of the Office of the Prosecutor General to respect the right of former YUKOS oil company head Mikhail Khodorkovskii and his associate Platon Lebedev to a fair trial in accordance with international standards. Both men are awaiting a second trial amidst fears that procedural violations may result in the trial failing to meet international standards of fair trial. Violations of international fair trial standards marred the first investigation and trial against the two men. Amnesty International has been concerned about their treatment post-conviction, including being sent to remote locations to serve their sentences, and that the two men’s rights to adequate time and facilities to prepare their defence to the second set of charges against them have been hindered and their legal team has been harassed. The fair trial concerns in this case highlight some of the concerns Amnesty International has about the criminal justice system in Russia, including respect for the rule of law and judicial decisions, and interference with the right to defence through the harassment and intimidation of defence lawyers.

Conflict in Georgia

Amnesty International is concerned that during the conflict in Georgia that broke out in August 2008, Russian forces may have been responsible for violations of international humanitarian law, including war crimes. Amnesty International has gathered information suggesting that there were incidents of indiscriminate bombing by Russian forces, including with the use of cluster bombs, in areas where civilians were also present. There have also been reports that, on occasion, Russian forces deliberately targeted civilians during

hostilities. Also of concern is the almost complete failure by the Russian authorities to control South Ossetian forces and irregular paramilitary groups acting in areas under Russian control. These groups have allegedly been responsible for looting and burning civilian property on a large scale in South Ossetia. On occasion the destruction of civilian property by these groups is reported to have taken place in the presence of Russian forces. Amnesty International is particularly concerned at information gathered that suggests many of the actions of the South Ossetian paramilitary groups were ethnically targeted against Georgian civilians in villages under Georgian administrative control prior to the conflict. Access of humanitarian aid organizations to the so-called 'buffer zone' outside South Ossetia has reportedly been hampered by Russian forces, increasing the difficult circumstances in which civilians still living there find themselves. Amnesty International is concerned that continuing security concerns and the destruction of houses belonging to displaced Georgians will hinder their right to a safe and sustainable return to their property.

D. Recommendations for action by the State under review

There have been positive developments over the past several years, for example the reform of the criminal and criminal procedure codes, some improvement in prison conditions, prosecutions of some police officers for abuses amounting to torture and other ill-treatment, and also the continued maintenance of the moratorium on the death penalty. Nevertheless, overall serious patterns of violations persist and in some cases have worsened in recent years. Amnesty International calls on the Russian authorities to take the following steps to address the issues addressed in this submission:

North Caucasus

- Take immediate and effective measures to end arbitrary detentions, enforced disappearances, secret detention, torture and other ill-treatment and extra-judicial executions, including by ensuring such violations are fully investigated and that those reasonably suspected of being responsible for human rights abuses are brought to justice in trials which meet international standards of fair trial;
- Sign and ratify the UN Convention for the Protection of All Persons from Enforced Disappearance.

Human rights defenders in the North Caucasus

- Respect and protect the right of human rights defenders and lawyers to conduct their work without hindrance, intimidation or harassment, in line with the UN Declaration on Human Rights Defenders and the UN Basic Principles on the Role of Lawyers;
- Ensure that violations of the rights of journalists, human rights defenders and independent civil society activists are investigated fully, promptly and impartially. Anyone found responsible for such violations should be brought to justice in a trial which meets international standards of fairness.

Torture and other ill-treatment in police custody

- Respect the obligations under international human rights treaties to protect the right of those in detention to be free from torture or other ill-treatment, including by ensuring access to legal counsel at all stages of the criminal investigation, access to a doctor of their choice, for relatives to be notified of the detention, and for detainees to be brought promptly before a judge;
- Ensure that the Investigation Committee under the Office of the Prosecutor develops standards for ensuring that investigations are independent, effective, prompt, and impartial, and that investigators are trained in how to investigate allegations of torture or other ill-treatment;
- Sign and ratify the Optional Protocol to the UN Convention against Torture.

Violence against women in the family

- Enact and enforce laws which recognize violence against women in the family as a distinct and serious crime;

- Encourage and enable cooperation between government bodies and NGOs to develop effective and sustainable mechanisms to protect women from violence in the family;
- Protect victims of violence against women in the family, including by providing access to shelters where they can be protected from abuse, and protect witnesses and others at risk of intimidation and reprisals during investigations and prosecutions.

Freedom of expression, assembly and association

- Ensure that the rights to freedom of expression, assembly and association, as enshrined in the European Convention on Human Rights and the International Covenant on Civil and Political Rights, are respected;
- Institute an urgent review of the NGO law and its implementation;
- Ensure that the law to combat extremist activities is not used arbitrarily and that its implementation does not lead to the restriction of the right to freedom of expression;
- Protect and promote the right to freedom of assembly, including of those who may wish to express dissenting views during peaceful demonstrations.

Violent racism

- State clearly that racism and xenophobia will not be tolerated;
- Ensure that crimes which are reasonably believed to be racially motivated are classified, and effectively and thoroughly investigated and prosecuted as such.

Fair trial

- Respect the right to a fair trial in all cases without discrimination including by ensuring the independence of the courts from the executive and access to effective legal assistance for all in the criminal justice system.

Conflict in Georgia

- Investigate all alleged violations of human rights and international humanitarian law, including any war crimes committed by Russian forces in Georgia independently, impartially, promptly and thoroughly and bring those responsible for such crimes to justice in accordance with international fair trial standards;
- Provide redress, including compensation, to victims of human rights violations and war crimes.

Appendix: Amnesty International documents for further reference⁴

Situation of Human Rights in the North Caucasus

Russian Federation: What justice for Chechnya's disappeared?, AI Index: EUR 46/020/2007, 23 May 2007

Forcible eviction, 147 internally displaced families, AI Index: EUR 46/003/2008, 25 January 2008

Fear for safety/torture/incommunicado detention/enforced disappearance, Makhmadsalors Delilovich Masaev (also known as Mukhamadsalakh Masaev), AI Index: EUR 46/025/2008, 6 August 2008

Human rights defenders, journalists and lawyers in the North Caucasus

Russian Federation: Human rights defenders at risk in the North Caucasus, AI Index: EUR 46/053/2007, 28 November 2007

Russian Federation, Ingushetia: Detention and beating of human rights activist must be investigated, AI Index: EUR 46/024/2008, 25 July 2008 (on the case of Zurab Tsechoev)

Russian authorities must ensure investigation into the killing of opposition website owner Magomed Evloev is truly impartial, AI Index: EUR 46/027/2008, 1 September 2008

Torture in police custody

Russian Federation: Supplementary Briefing to the UN Committee against Torture, AI Index: EUR 46/039/2006, [date] October 2006

Russian Federation: Torture and forced "confessions" in detention, AI Index: EUR 46/056/2006, 22 November 2006

Violence against Women in the family

Russian Federation. Nowhere to turn to. Violence against women in the Russian Federation, AI Index: EUR 46/056/2008, 14 December 2005

Freedom of expression, association and assembly

Russian Federation: Freedom limited. The right to freedom of expression in the Russian Federation, AI Index: EUR 46/008/2008, 26 February 2008

Violent racism

Russian Federation: Violent racism out of control, AI Index: EUR 46/022/2006, 4 May 2006

Fair trial concerns

Russian Federation: New trial of Mikhail Khodorkovskii and Platon Lebedev must meet international fair trial standards, AI Index: EUR 46/052/2007, 7 December 2007

Conflict in Georgia

Georgia and Russia must protect civilians in South Ossetia, AI Index: EUR 56/004/2008, 10 August 2008

Georgia, Russia: Suffering of civilians must stop and abuses must be investigated, AI Index: EUR 56/007/2008, 14 August 2008

Continuing concerns for civilians after hostilities in Georgia, 22 August 2008

⁴ All of these documents are available on Amnesty International's website: <http://www.amnesty.org>