

Submission by the Society for Threatened Peoples International



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The Society for Threatened Peoples (STP) is an independent international human rights organisation representing minorities and indigenous peoples worldwide. The Swiss section has been following the situation in the North Caucasus, particularly Chechnya, since the first war in 1994. It has been working closely with local NGOs and hosts an audiovisual archive documenting grave and systematic crimes committed in Chechnya.

The STP thus notes the following main areas of concern raised in part at the 1st UPR cycle of the for review on the Russian Federation (RF) at the 2nd cycle and respectfully requests the Committee to put forward the following recommendations:

1. Impunity for killings and attacks on human rights defenders;
2. Non-compliance with rulings from the European Court of Human Rights;
3. Lack of criminal, political and moral accountability for war crimes and crimes against humanity committed in Chechnya.

1. Impunity for killings and attacks on human rights defenders

1.1 Although impunity for killings and attacks on human rights defenders, journalists, lawyers and whistle-blowers remains the norm in the RF, certain progress has been made in several cases since 2009 – notably those raised by the Committee at the UPR 1st cycle and accepted by the Russian state.¹

1.2 Firstly, two ultra-nationalists were tried in April 2011 (with the decision being upheld by the Russian Supreme Court in September 2011) and imprisoned for the killing of human rights lawyer, Stanislav Markelov, and “Novaya Gazeta” journalist, Anastasiya Baburova who were shot dead in Moscow in January 2009. Notwithstanding the above, questions as to the actual mastermind behind the crime remain unanswered.

1.3 Secondly and demonstrating a tentative step forward in this regard has been the formal indictment of retired police Lt. Col. Pavlyuchenkov on charges of complicity in the murder of Anna Politkovskaya. After years of stalling and ineffective investigations since the internationally-acclaimed journalist was killed six years ago, this may be a sign for cautious optimism.

1.4 Colleagues of Politkovskaya at the “Novaya Gazeta” and Russian human rights activists are however sceptical about the political motivation behind this new development and fear that Pavlyuchenkov may ultimately prove to be another scapegoat – although very much involved, unlikely to be the person responsible for actually ordering the killing.

1.5 Furthermore, the Russian Investigative Committee has since announced that Pavlyuchenkovs case will be handled separately from the other alleged perpetrators in a trial with “special circumstance status.”² This entails a trial without evidentiary review or witness testimonies; moreover, the court cannot sentence the defendant to the maximum punishment. To what extent this will impact on the outcome of the case in terms of criminal accountability and justice for the victim and her family thus remains to be seen.

1.6 Although such developments are to be welcomed, lack of accountability for killings and attacks on human rights defenders throughout the RF remains the norm. Particularly in the North Caucasus, many cases are at a standstill while new murders and harassment continue. In fact, since the UPR 1st cycle, human rights defenders in Chechnya were dealt a serious, if not final, blow by the murders of their colleagues, Natalya Estemirova (killed 9th July 2009), Zarema Sadulaeva and Alik Dzhabrailov (killed 10th August 2009).

1.7 In the former case, a report by human rights NGOs and “Novaya Gazeta” has highlighted the negligence and shortcomings of the official investigation; in the latter, even the identification of one of the abductors from the outset has done nothing to further the investigation into these crimes. Thus despite a number of general recommendations (numbers 43 to 47) made by the Working Group pertaining to the adoption of measures to protect journalists and human rights defenders as well as to effectively investigate and prosecute crimes against them, which were all accepted by the RF after the 1st UPR cycle, have not been fulfilled.

1.8 These brazen acts of abduction, torture and summary execution of civic activists in broad daylight, the lack of an effective investigation and the continuing impunity afforded to the perpetrators, have effectively stifled civil society particularly in Chechnya. Many independent activists have been forced to seek asylum outside the RF and those remaining face never-ending bureaucratic hurdles, falsified accusations of extremism or even physical threats.

¹ A/HRC/11/19* paragraphs 18, 21, 24, 58

² http://rapsinews.com/judicial_news/20120906/264596660.html

1.9 Furthermore, many local NGOs simply do not report incidents of harassment from the authorities for fear of graver consequences for themselves or their families. The STP Switzerland is aware of several Chechen NGOs who prefer to remain anonymous being targeted by the local authorities, one of which has also been forced to close down in light of the new NGO law.

1.10 This law passed on 15th July 2012, instead of exemplifying the RF's stated commitment to a "constructive dialogue" with NGOs regarding the laws regulating their activities as per its position paper following the 1st UPR cycle³, conversely imposes even heavier burdens on them and declares that foreign-funded NGOs must register themselves as 'foreign agents'. Thus instead of improving NGO working conditions in the RF, the situation has actually reached the lowest point in recent civic years.

Recommendations

- Investigate all unsolved killings and attacks on journalists and human rights activists - in particular the murders of Anna Politkovskaya, Natalya Estemirova, Zarema Sadulaeva and Alik Dzhabrailov - in a credible, impartial and transparent manner and bring the real perpetrators to justice;
- Amend the new NGO law so it cannot be misused to further repress civil society and refrain from public actions displaying tacit approval of harassment against critical voices in Russian society;
- Respect and promote the work of human rights defenders in accordance with the UN Basic Principles on the Role of Lawyers and UN Declaration on Human Rights Defenders.

2. Non-compliance with the European Court of Human Rights (ECtHR)

2.1 In 2006, the ECtHR issued its first rulings holding Russia responsible for civilian deaths in Chechnya during the "counter-terrorist operation" since 1999. Since then it has issued over 150 similar rulings concerning such grave crimes as enforced disappearance, summary execution and torture. At the time of the 1st UPR cycle, the Working Group commended "the commitment of the authorities to execute those rulings" further stating that the RF "enforces decisions of the European Court on Human Rights, including cases related to the Chechen Republic."⁴

2.2 The STP would therefore like to bring to the Committees attention the following developments which it believes to exemplify the actual and very troubling attitude of the Russian authorities towards the ECtHR rulings and the wider implications this has for the judicial system and climate of impunity in the RF. Indeed, even the Council of Europe Committee of Ministers (CoE COM) has recently been forced to concede that:

"in the vast majority of cases, it has not yet been possible to achieve conclusive results and to identify and to ensure the accountability of those responsible, even in cases where key elements have been established with sufficient clarity in the course of domestic investigations..."⁵

2.3 This issue of non-implementation is therefore key in the impunity debate in the RF. Although an international court has held the Russian state responsible for grave and systemic crimes committed in Chechnya, disregard for these rulings effectively demonstrates that the perpetrators have nothing to fear. Although the state pays the monetary compensation to the plaintiffs as stipulated by the Court, there has been little attempt, if not outright negligence, in implementing the substance of the rulings.

³ A/HRC/11/19/Add.1/Rev.1 recommendation 42

⁴ A/HRC/11/19* paragraphs 20 and 69

⁵ Int Res CM/ResDH(2011)292, 2 Dec. 2011

2.4 This already grave state of affairs is being compounded by two ‘get-out’ clauses plied by the Russian authorities which threaten to further impede attempts to secure criminal accountability for perpetrators of serious human rights violations - firstly, amnesty provisions which preclude prosecution of law-enforcement agents suspected of committing crimes in the North Caucasus since 1993 and secondly, domestic legal provisions for statutes of limitations on certain crimes.

2.5 The first of these ‘get-out-of-jail-free’ cards is the Amnesty Acts of 2003 and 2006. On the surface, certain serious crimes committed during this period are not covered by the amnesty thus theoretically ensuring that perpetrators of such grave violations will be held criminally accountable for their actions. However, vague definitions allow for the re-classification of grave and systematic crimes such as torture to be (mis)interpreted as mere “abuse of power”, acts for which amnesty may thus be granted in accordance with the law.

2.6 The crux of the issue thus lies not in the existence of the amnesty itself but in its interpretation and application – by effectively downgrading the crimes, accountability for war crimes and systematic abuses committed in Chechnya is put further at risk. A recent and poignant example of this is the case of brutal and prolonged torture resulting in the ear of a Chechen pensioner being cut off by police officials (*Sadykov vs Russia* handled by the ECtHR in 2010). The Russian authorities justified their granting of amnesty to the perpetrators and consequent suspension of criminal proceedings at the domestic level stating that:

*“B. and Z., who were officers of internal affairs bodies, committed an offence under Part 3 Art. 286 of the Criminal Code of the RF (exceeding official powers with the use of violence) in the territory of the Chechen Republic during the period of the counter-terrorist operation. So... the act of amnesty was applied lawfully and was well-founded according to the criteria defined in the legislation and Resolutions of the State Duma.”*⁶

The Russian authorities further justify their position by stating that:

*“the application of the amnesty and the termination of the prosecution against [B. and Z.] were checked and found lawful by the Prosecutor’s Office of the Chechen Republic. It should be noted that the act of amnesty... applies equally to all categories of persons which it covers. According to the National Anti-Terrorist Committee... the act of amnesty was applied in respect of the 546 members of illegal armed groups.”*⁷

2.7 Although the Amnesty Acts do appear to apply to both sides of the conflict, the relevant clause concerns “civilians, who had committed crimes during the period of the counter-terrorist operation ... who voluntarily refused to participate in illegal armed groups or settled armed groups (gangs), laid down weapons and military hardware.”⁸ The alleged 546 persons registered for the amnesty has moreover widely been seen as a sham whereas credible sources report that at least 20,000 Chechen prisoners are being held throughout the RF, many on falsified charges based on confessions extracted under torture.

2.8 The application of amnesty provisions to law-enforcement officials who have committed grave and systematic human rights violations in the Chechen Republic demonstrates a very troubling approach of the Russian authorities which, rather than showing commitment to hold perpetrators accountable for their crimes, would appear rather to promote the continuing impunity plaguing the region. The Explanatory Regulations also allow for an indefinite application of the amnesty provisions which in practice potentially cover all crimes committed by state agents in the North Caucasus between 12th December 1993 and 22nd September 2006.

⁶<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2133484&SecMode=1&DocId=1918146&Usage=2>

⁷ Ibid.

⁸ Ibid.

2.9 The second 'get-out-of-jail-free' card concerns the equally troubling application of statutes of limitations to the aforementioned grave crimes. Although most countries incorporate statutes of limitations for certain crimes in their domestic legal code (in Russia limitations of 10 and 15 years apply), it is also widely held that for certain serious crimes – including large-scale and systematic human rights violations – statutes of limitations should not be applied.

2.10 However, the Russian authorities have already tentatively indicated that they will pursue this option which particularly concerns the majority of Chechen cases (violations committed in 2000–2003) by stating in a recent August 2012 submission to the CoE⁹:

-Crimes must be explicitly qualified as genocide, ecocide, planing or waging an aggressive war etc. in accordance with Russian law in order to avoid the application of statutes of limitation;

-No mention of the exclusion of war crimes or crimes against humanity although this is an internationally accepted principle and the RF is a party to the International Convention on the Non-Applicability of Statute of Limitations to War Crimes and Crimes Against Humanity;

-Expiration of the time limit calls not only for compulsory application of the statute of limitations, but also “in case of identification of the perpetrator of the crime the expiration of the statute of limitation period can serve as a basis for the release of the person from criminal responsibility...”

2.11 Thus despite having accepted Working Group recommendations 29 and 36 from the 1st UPR cycle pertaining to transparent accountability mechanisms, the provision of effective remedies and legal redress for victims of human rights violations with particular concern for widespread acts of torture in the Chechen Republic, the aforementioned actions in relation to the EctHR rulings demonstrate a very different commitment.

Recommendations

- Demonstrate a real commitment to pursuing criminal accountability for serious human rights violations, following international principles and abstaining from the application of amnesty provisions and / or statutes of limitations incl. transparent communication of decisions made in this regard;
- Refrain from downgrading serious, international crimes such as torture so that suspected perpetrators are freed from criminal responsibility under the abovementioned 'get-out' clauses, acts which perpetuate the commission of torture in the RF to continue with impunity;
- Act in accordance with the letter and spirit of international conventions to which the RF is a party rather than effectively aiding and abetting perpetrators of serious human rights violations to avoid criminal accountability.

3 No accountability for war crimes in Chechnya

3.1 The STP believes that the lack of criminal, political and moral accountability for the systematic crimes committed by the Russian armed forces in the Chechen Republic since 1994, the gravity and patterns of which may qualify them as war crimes and crimes against humanity, continues to plague many of the systemic issues under consideration by the Committee in terms of Russia's track record and commitment to the protection of human rights and democratic freedoms.

⁹ More details at http://www.londonmet.ac.uk/fms/MRSite/Research/HRSJ/EHRAC/Advocacy/sbm_main_14_9_12.pdf

3.2 The lack of any thorough or independent investigations into the brutal events of the last 18 years has also contributed to the continuation of serious human rights abuses not only in the Chechen Republic but throughout the North Caucasus region where perpetrators simply have nothing to fear. Without impartial investigations into past and current crimes, the ineffective handlings of the Federal and local authorities have ensured a climate of impunity that is deeply entrenched and ultimately sanctioned at the highest levels.

3.3 Although some measure of redress is being received by those able to reach the ECtHR, truth and justice still elude the victims and their relatives – the majority still do not know what has happened to their disappeared relatives nor who is responsible. On the contrary, the Russian state has actually promoted suspected war criminals such as Lt. General Vladimir Shamanov, an infamous figure in recent Chechen history known for his particular brutality and murderous military operations.

3.4 Despite an ECtHR ruling in 2005, for example, holding Shamanov responsible for the indiscriminate bombing of Katyr-Yurt village resulting in heavy civilian casualties incompatible with “the degree of caution expected from a law-enforcement body in a democratic society”¹⁰, as well as being implicated in several other episodes of mass human rights violations, Shamanov was promoted to commander of the Russian airborne troops in 2009. Following on from this ruling, the domestic authorities dropped criminal proceedings against Shamanov in 2007 due to their being “no evidence of a crime” and even though the Kremlin stated later in December 2008 that this decision would be reviewed, there have been no developments in this regard.

3.5 Another notorious case is that of General Aleksandr Baranov who was captured on film by CNN journalists ordering the summary execution of an on-screen rebel prisoner. Although this case was also brought before the ECtHR and decided in favour of the plaintiff in 2006, the Russian authorities refused to instigate criminal proceedings against Baranov due to a linguistic analysis claiming his statement to “take him away, damn it, finish him off there... that’s the whole order”¹¹ did not actually qualify as an order.

3.6 In view of the Russian authorities overwhelming negligence and disregard in demonstrating any degree of commitment in handling issues of accountability –whether criminal, moral or political- for the wars in Chechnya almost 20 years on, the STP believes that the creation of an independent, international inquiry must be revisited and reinvigorated by the international community and would urge the Committee to consider this final point for the 2nd cycle review.

Recommendations

- Provide unimpeded access and facilitate visits to the region by independent observers and international experts, including those of UN bodies still denied access (most notably the Special Rapporteur on Torture, for example);
- Identify and immediately suspend from official capacity suspected perpetrators of human rights violations until the cases are effectively and transparently adjudicated, incl. key figures in the Russian military such as Generals Shamanov and Baranov;
- Agree to the deployment of an international commission of inquiry with a mandate to investigate violations of international humanitarian law, the commission of war crimes and crimes against humanity in Chechnya since 1994 and to recommend prosecutions in this regard.

¹⁰ Isayeva v. Russia at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-68381>

¹¹ http://en.wikipedia.org/wiki/Khadzhi-Murat_Yandiyev