



**European Human Rights
Advocacy Centre**



GENERAL ALLEGATION TO THE UNITED NATIONS WORKING GROUP ON ENFORCED OR INVOLUNTARY DISAPPEARANCES

I. INTRODUCTION

1. This General Allegation concerns the systemic failure of the Russian Federation to investigate enforced disappearances carried out by Russian security forces within the Chechen Republic (and wider North Caucasus region) between the years 1999-2006. It further concerns the failure of the Russian Federation to assist the relatives of those disappeared individuals in determining the fate or whereabouts of their loved ones and the consequential prolonged and painful state of limbo which such an approach has inflicted upon these families. In this regard and in accordance with the Methods of Work of the Working Group on Enforced and Involuntary Disappearancesⁱ ['WGEID'], we submit that these failures amount to "*obstacles encountered in the implementation of the Declaration*" which we draw to the attention of the WGEID.
2. The European Court of Human Rights ['the ECtHR'] has to date passed down judgment in relation to nearly 300 individuals whom it has found to have been forcibly disappeared in the North Caucasus between 1999 and 2006.ⁱⁱ The ECtHR held that by virtue of these enforced disappearances, the Russian Federation had committed violations of the right to life and the right to be free from torture.ⁱⁱⁱ It also held that the authorities' treatment of the relatives of the disappeared caused suffering that amounted to inhuman and degrading treatment.^{iv} In almost all instances, this suffering was ongoing at the time of judgment due to the lack of any effective investigation at domestic level over many years. Despite the fact that the Russian Federation denied responsibility before the ECtHR for each and every disappearance, the ECtHR nevertheless held that the applicants' evidence had established these facts and the associated violations 'beyond reasonable doubt' in every case.^v
3. This General Allegation is made on behalf of the European Human Rights Advocacy Centre ['EHRAC'], Memorial Human Rights Centre ['Memorial'] and Stichting Justice Initiative ['SJI'].^{vi} Our combined litigation before the ECtHR accounts for more than 80% of the 250 judgments the Court has handed down in relation to egregious human rights violations committed by Russian security forces in the North Caucasus from 1999 onwards.^{vii}

II. THE SYSTEMIC FAILURE

4. In every case in which we act, the Russian authorities have paid financial compensation to the victims as required by the Court. By contrast, in not a single

case have the Russian authorities carried out an effective investigation into the disappearances either to identify and prosecute the perpetrators or to provide meaningful information to the families of the disappeared individuals as to the fate of their relatives. This failure has persisted over more than a decade in spite of a post-judgment legal obligation upon the Russian Federation to abide by the ECtHR's ruling.^{viii}

5. Both the ECtHR and the Parliamentary Assembly of the Council of Europe ['PACE'] have recognised the repetitive nature of the obstacles faced by the families of disappeared individuals and victims of other serious human rights violations/crimes in the region. For example: inexplicable delays or a complete failure by the authorities to undertake basic investigative steps including the opening of investigations, the conduct of autopsies or forensic medical tests^{ix} and even extending to a failure to identify or question obvious witnesses/suspects;^x the refusal of security services to provide law-enforcement agencies with necessary information;^{xi} the failure to provide necessary facilities (such as a laboratory within the Chechen Republic that is capable of identifying decomposed bodies) for investigation within the region;^{xii} the perpetual suspension or prolongation of investigations without meaningful results^{xiii} - even in cases where apparent suspects had been identified and the failure to establish the identity of those higher up the chain of command responsible for operational decisions. To compound these investigational defects, the authorities have repeatedly prevented the applicants from gaining meaningful access to case files^{xiv} and have made it clear that domestic criminal limitation periods of 10-15 years will be applied to these cases.^{xv}
6. In addition to these concerns as noted by external assessors, the former Deputy Head of the Investigative Directorate of the Chechen Republic has confirmed that the investigation of crimes committed by security forces in the North Caucasus are significantly hampered by problems which include: *"the inability of investigators to gain access to the archives of the Ministry of Defence and the Federal Security Service (the FSB) regarding the conduct of special operations; the lack of effective interdepartmental co-operation in the course of investigations; the absence of suitable forensic laboratories in Chechnya able to conduct genetic and molecular tests and the absence of a genetic and molecular database of missing persons in connection with the counter-terrorist operation in Chechnya"*.^{xvi}
7. Notably, of the nearly 300 individual enforced disappearance cases which the ECtHR has ruled upon, at the time at which the Court examined each case, the fate of only a very limited number had been established (albeit many years after the events in question).^{xvii} Thereafter, despite a decade of supervision by the Department for the Execution of Judgments of the ECtHR and the Committee of Ministers of the Council of Europe ['the CM'] (who are charged with responsibility for monitoring the implementation of ECtHR judgments), the fate of the remaining individuals has still yet to be established by the authorities.^{xviii}
8. Furthermore, family members of disappeared individuals have encountered intransigence, obstruction and hostility when attempting to pursue the fate of their loved ones with domestic authorities.

9. In March 2016, a letter to President Putin by approximately 100 Urus-Martian residents (Chechnya) stated as follows:

Our children were not taken into captivity on the field of battle, nor were they detained for the committal of crimes. They were kidnapped by military personnel and representatives of the security agencies, who were supposed to observe law and order. Kidnapped without the presentation of any accusations. And we don't even know if they are living or not. Is it really possible that such things are legal in a civilised country?...

We still do not know either the location or what happened to our children after their detention....

So, once again, we are entreat, petition, plead with you, even, to show us compassion, relieve us our suffering and make the appropriate authorities carry out their responsibilities to pursue this matter to its conclusion and inform us of its results, however bitter those may be.^{xi}

10. In response, a representative of the Investigative Committee of Urus-Martian summoned the two lead applicants responsible for the letter and shouted at them: *"You have your compensation - what else do you want from us?"^{xx}*
11. In the absence of meaningful investigation by the authorities, many of the families whom we represent still believe their relative(s) could be alive and feel that the payment of compensation has been used by the authorities to justify no further action on their cases. The overwhelming majority of families prioritise reliable information about the fate of their close relative as a priority over prosecution of the perpetrator.^{xxi}
12. Significantly, in addition to the suffering caused to the families that we represent, it is submitted that the failure of the Russian Federation to address these issues has facilitated a climate of impunity which has contributed to the ongoing commission of serious crimes and human rights violations in the region (including enforced disappearances).^{xxii}
13. In our respectful submission, there can be no doubt that the continued systemic failure of the Russian Federation to meaningfully investigate these cases amounts to an ongoing and insurmountable obstacle to the implementation of the Declaration on the Protection of all Persons from Enforced Disappearance as a whole (and in particular Article 2^{xxiii}, Article 9^{xxiv}; Article 13^{xxv} and Article 14^{xxvi}). For these reasons, we respectfully request the WGEID to transmit to the Russian Federation a summary of this General Allegation Submission in accordance with the provisions of the WGEID Methods of Work.
14. Furthermore, if this General Allegation is accepted and transmitted, we respectfully ask the WGEID to consider the following additional steps:
- a. *To direct requests towards the Russian Federation to provide specific information on the following issues:*
 - i. *what attempts have been made to date in order to determine the fate of those individuals who have been reported as disappeared, including*

- attempts to locate the bodies or remains of those individuals in respect of whom the ECtHR has concluded that they must be "presumed dead";*
- ii. when a comprehensive mapping exercise of suspected mass (or any) graves will be conducted and plans made for exhumation of the same;*
 - iii. whether in all cases of suspected enforced/involuntary disappearance in the region, DNA has been gathered from family members in accordance with best practice and whether such samples are being stored in one centralised location (and if so, where that location is).*
 - iv. when a forensic laboratory with the capability of conducting DNA match analysis (and sufficient resources to allow the proper functioning of such an institution) will be established inside the Chechen Republic;*
 - v. what protocol has been applied to cases where the death of an individual reported as disappeared has been confirmed and whether that protocol included (in all instances), informing relatives of the death of their family member and providing a copy of a forensic autopsy report;*
 - vi. what steps the Russian Federation will take to ensure that neither amnesty provisions nor domestic statute of limitations hamper the ongoing resolution of these cases; and*
 - vii. when the stipulations of the ECtHR in the case of Aslakhanova^{xxvii} will be complied with (with specific reference to those provisions relating to victims and their families)*
- b. To continue to press the Russian Federation to allow the WGEID to undertake a country visit as soon as possible;*
- c. In the absence of permission to visit the Russian Federation itself, the WGEID is respectfully asked to consider making a request to visit or formally liaise with the CM of the Council of Europe in Strasbourg. It is submitted that such cooperation would allow the WGEID to gather relevant data in respect of these cases and the overarching issues identified within this submission. At the same time, it is respectfully submitted that such horizontal sharing of expertise and material may allow the CM to draw on the WGEID's international expertise in addressing the technical and political challenges of addressing long term systemic failures in the investigation of involuntary and enforced disappearances;*
- d. To lead an initiative to coordinate efforts to combat disappearances in the Russian Federation (particularly those committed by security forces in the North Caucasus) together with other organs of the UN, including the Human Rights Committee; and*
- e. To convene a formal meeting with the Russian Government during a WGEID session (during which civil society representatives could be invited to discuss the content of this submission).*

ⁱ General allegations: 33. The Working Group regularly transmits to States a summary of allegations received or gathered from States, reliable sources, such as relatives of disappeared persons, or credible non-governmental organizations with regard to obstacles encountered in the implementation of the Declaration in any State, and requests the State to comment thereon if it so wishes. General allegations will be reflected in the post-session documents and in the annual report of the Working Group.

ⁱⁱ In May 2016, the Department for the Execution of Judgments of the European Court of Human Rights published an overview of the Court's judgments concerning enforced disappearances in the North Caucasus between the years 1999 and 2006. This document provides details of nearly 300 disappeared individuals in respect of whom the fate of only 38 were known at the time of judgment. See Annex 5: 'H/Exec(2016)5 - 25 May 2016 Khushiyevev and Akayeva v Russian Federation (No. 57942/00) group of cases – Overview of the Court's judgments concerning enforced disappearances in the North Caucasus and the information provided by the Russian authorities as regards the measures taken to establish the fate of missing persons – Memorandum prepared by the Department for the Execution of Judgments of the European Court of Human Rights'

ⁱⁱⁱ Under Articles 2 and 3 of the European Convention on Human Rights

^{iv} Under Article 3 of the European Convention on Human Rights

^v See Aslakhanova & others v Russia (Application no. 2944/06 and others) 18 December 2012, paragraph 95

^{vi} In light of the wording of the WGEID's Methods of Work in respect of 'credible non-governmental organizations', details in relation to EHRAC, MHRC and SRJI are set out at Annex 1.

^{vii} These figures reflect the full list of cases in the Khushiyevev and Akayeva group of cases under 'enhanced supervision' by the Committee of Ministers of the Council of Europe following a judgment in each case by the ECtHR. This grouping of cases includes not only the almost 300 enforced disappearances from the North Caucasus ruled upon by the ECtHR (some of which have been dealt with by the ECtHR in joint judgments accounting for the fewer number of judgments than individual disappearances) but also cases of extra judicial killings, unjustified use of military force, unlawful search and seizure operations and destruction of property in the region from 1999 onwards.

^{viii} See Article 46 of the European Convention on Human Rights

^{ix} See *inter alia*, Aslakhanova v Russia, Application No. 2944/06 and others, judgment of 18 December 2012; Khatsiyeva and others v Russia, Application No. 5198/02, judgment of 7 July 2008

^x See *inter alia*, Aziyevy v Russia Application No. 77626/01, judgment of 20 March 2008 and even extending to instances where the authorities were in possession of video footage showing the individuals responsible for the disappeared individual's arrest yet failed to question them – see Baysayeva v Russia Application No.74237/01 judgment of 5 April 2007

^{xi} See *inter alia*, Aslakhanova v Russia, Application No. 2944/06 and others, judgment of 18 December 2012

^{xii} In June 2016, PACE noted that "according to information received in November 2014 and confirmed in January 2016, no laboratory in the Chechen Republic is capable of identifying bodies that are decomposed." - PACE Doc. 14083 'Human Rights in the North Caucasus: what follow-up to Resolution 1738 (2010)?' paragraph 61. The authors of this submission are not aware of any change to this position at the current date.

^{xiii} Russian Federation case table providing details as to the state of investigations in the Khushiyevev group of cases, January 2015 cited in PACE Doc. 14083 'Human Rights in the North Caucasus: what follow-up to Resolution 1738 (2010)?' paragraph 58; In June 2016, PACE noted that once again "in most of the cases in this group, a criminal investigation is 'ongoing' or 'suspended' ; in no cases have perpetrators actually been prosecuted" - PACE Doc. 14083 'Human Rights in the North Caucasus: what follow-up to Resolution 1738 (2010)?' paragraph 66

^{xiv} See *inter alia* Aslakhanova v Russia, Application No. 2944/06 and others, judgment of 18 December 2012 and more recent interviews with applicants

^{xv} PACE noted in its 2016 report that "The issue of prescription is crucial because the majority of crimes into which investigations have been opened on the domestic level ...carry statutes of limitations of 10 to 15 years. In the majority of cases, criminal investigations are pending into crimes which occurred as far back as 14 years ago and which ostensibly carry statutes of limitation of 10 or 15 years and for which no one has yet been brought to justice."

^{xvi} See "Problems in the Investigation of Criminal Cases subject to examination by the European Court of Human Rights" Journal of the Investigative Committee No. 2(8) 2010, cited in PACE Doc. 14083 'Human Rights in the North Caucasus: what follow-up to Resolution 1738 (2010)?' para 59

^{xvii} In the context of this overview of cases prepared by the Department for the Execution of Judgments "fate of the disappeared persons" refers to the discovery of a body or remains which have been identified by some means as the disappeared person in question. In a small number of instances the cause of death has also been established.

^{xviii} See Annex 4 – Summary of statements made by the Committee of Ministers in the context of the 'enhanced supervision' procedure for the Khushiyevev and Akayeva v Russian Federation group of cases

^{xix} Letter from Urus-Martani residents to President Putin March 2016

^{xx} EHRAC interview with applicants August 2017

^{xxi} EHRAC interviews with applicants August 2017

^{xxii} The Parliamentary Assembly of the Council of Europe has described "the situation in the North Caucasus region with regard to safeguarding human rights and upholding the rule of law" as "one of the most serious in the entire geographical area covered by the Council of Europe. See *inter alia*, Human rights in the North Caucasus: what follow-up to Resolution 1738 (2010)? Doc. 14083, 8 June 2016

^{xxiii} Article 2: (1) No state shall practise, permit or tolerate enforced disappearances. (2) States shall act at the national and regional levels and in cooperation with the United Nations to contribute by all means to the prevention and eradication of enforced disappearance

^{xxiv} Article 9: (1) The right to a prompt and effective judicial remedy as a means of determining the whereabouts or state of health of persons deprived of their liberty and/or identifying the authority ordering or carrying out the deprivation of liberty is required to prevent enforced disappearances under all circumstances, including those referred to in Article 7 above.

^{xxv} Article 13: (1) Each State shall ensure that any person having knowledge or a legitimate interest who alleges that a person has been subjected to enforced disappearance has the right to complain to a competent and independent State authority and have that complaint promptly, thoroughly and impartially investigated by that authority. Whenever there are reasonable grounds to believe that an enforced disappearance has been committed, the State shall promptly refer the matter to that authority for such an investigation, even if there has been no formal complaint. No measure shall be taken to curtail or

impede the investigation..... (4) An investigation, in accordance with the procedures described above, should be able to be conducted for as long as the fate of the victim of enforced disappearance remains unclarified.

^{xxxvi} *Article 14: (1) Any person alleged to have perpetrated an act of enforced disappearance in a particular state shall, when the facts disclosed by an official investigation so warrant, be brought before the competent civil authorities of the State for the purpose of prosecution and trial All States should take any lawful and appropriate action available to them to bring to justice all persons presumed responsible for an act of enforced disappearance, who are found to be within their jurisdiction or under their control.*

^{xxxvii} *As set out in Annex 2*