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Committee on the Rights of the Child Secretariat
Office of the High Commissioner for Human Rights (OHCHR)
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CH-1201 Geneva
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Submitted through [Child Rights Connect](#)

Information on Russia for Consideration by the Committee on the Rights of the Child at its 94th Pre-Sessional Working Group (6 - 10 February 2023)

Dear Sir and Madam,

Please accept the submission of Stichting Justice Initiative for consideration by the Committee on the Rights of the Child at its 94th Pre-sessional Working Group (6-10 February 2023).

Please acknowledge receipt of the submission in due time to: srji.org@gmail.com

With highest regards,

A handwritten signature in blue ink, appearing to read 'Egbert Wesselink', with a stylized, flowing script.

Egbert Wesselink
Chair of the Board
Stichting Justice Initiative

About SJI

1. Stichting Justice Initiative ('SJI') has been providing legal assistance to victims of human rights violations in the former Soviet Union since 2001. SJI has a particular focus on advocacy for the rights of survivors of gender-based violence in Russia. The organisation seeks to ensure that victims have guaranteed access to effective remedies at national and international levels, publishes research on women's and children's rights in Russia and carries out awareness-raising activities related to the prevention of gender-based and domestic violence. In 2019, SJI won the first cases before the European Court of Human Rights on behalf of victims of domestic violence, including a case concerning stalking in Russia. SJI also secured the first decision by the Committee on the Elimination of Discrimination against Women (CEDAW Committee) in relation to a victim of domestic violence in the North Caucasus.

Purpose of the report

2. In its Concluding observations of 25 February 2014, the Committee expressed its concern about the harmful practices against girls and women in the North Caucasus. The Committee focused on the themes of "honour killings", "bride kidnapping", and on the persistence of child marriages of girls and polygamy. These traditions were largely regarded as historical relics in Soviet times and their return into everyday life in the North Caucasus is linked to the weakening of state institutions.

3. We would also like to draw the Committee's attention to another antiquated regional custom, the active return of which threatens the rights of the child guaranteed by the Convention. There is an ongoing widespread and persistent discriminatory practice affecting women in the Russian Federation's North Caucasus region: denying mothers the right to raise their children or maintain a close relationship with them after divorce from the father or the father's death. The return of this norm has occurred with the tacit agreement of the federal centre.

4. Over the past 5-6 years, SJI has obtained a series of judgments by the ECtHR in favour of petitioners, including the Court's judgment on discrimination against women in the North Caucasus in relation to the practice of child removal. However, Russia's withdrawal from the Council of Europe, the consequent loss of Russian access to the ECtHR, Russia's refusal to enforce earlier ECtHR judgments, and the dramatic deterioration of the situation with regard to the persecution of human rights defenders and activists in Russia and the North Caucasus, have all jeopardised the ability to consistently enforce the rights of children guaranteed under the Convention. Furthermore, it has created all the conditions for the widespread expansion of harmful practices in the North Caucasus and in Russia.

5. We would like to provide an overview of the problem and propose measures that should be immediately applied by the Russian government.

The unlawful practice of alienating children from a woman upon her husband's divorce or death in favour of her husband's family in the North Caucasus region and the rights of the child

A) Norms of traditional law, initiatives of the North Caucasus authorities

6. In Chechnya, the exclusion of mothers from the upbringing of their children after divorce or the death of their biological father is systematic and takes place in accordance with the official state policy at the regional level, without any reaction from the federal authorities¹. This practice is due to the system of uncoded law that has developed over centuries in Chechen family life - Adat - a list of customary norms, reflected in a set of proverbs and anecdotes.

7. Chechen society is organised according to an exclusive and extreme form of patrilinearity, in which children's lineage (family) and identity (clan and ethnicity) is passed down entirely on their father's side². The mother's role holds no significance in this understanding of parentage. Therefore, when a woman leaves her husband's home, she cannot take her children with her. If she manages to take the children with her anyway, the father's side may resort to pressure, threats, and the mobilisation of clan elders, subterfuge or even violence in order to take the children away from her.

8. Civil courts usually make custody decisions in favour of women. But these decisions are ignored by the defendants, the families of the former husbands. The affected children are forcibly taken away from their mothers to the father's clan.

9. In Chechnya, the Chechen Supreme Islamic Council (Muftiyat)³, an institution whose budget is at least partially supported by funds from the federal budget, has been given priority over local court decisions in divorce and child custody cases in order to limit women's access to the judicial system. In July 2017, a "family reunification" initiative was introduced in Chechnya⁴. On this initiative, a resolution was subsequently adopted by the Chechen Civil Forum stating that the official divorce

¹ The only bandit is you. A female resident of Chechnya reported being beaten up by the police while trying to assert her rights to her children. // Kavkaz. Realii. - 2020. - 9 November, at: <https://www.kavkazr.com/a/30938391.html>

² "Divorce in Chechen: And whose are the children?", Daptar, October 10 2017, at: <https://daptar.ru/2017/10/11/%d1%80%d0%b0%d0%b7%d0%b2%d0%be%d0%b4-%d0%bf%d0%be-%d1%87%d0%b5%d1%87%d0%b5%d0%bd%d1%81%d0%ba%d0%b8-%d0%b0-%d0%b4%d0%b5%d1%82%d0%b8-%d1%87%d1%8c%d0%b8/>

³ There are more than 20 Muftiyats in various regions of Russia where a significant proportion of the population profess Islam. The creation of muftiyats is ensured by the Federal Law on Freedom of Conscience and on Religious Associations. Part 3 of Article 4 of the Law provides for tax and other benefits to such organisations. The law does not provide grounds for any other types of financial support to muftiyats.

⁴ The Chechen public has taken additional measures to strengthen and preserve the institution of the family. // Grozny-Inform. - 2017. - 13 November, at: <http://www.grozny-inform.ru/main.mhtml?Part=17&PubID=90307>

procedure is only possible after application to the local Muftiyat⁵. The new policy was accompanied by the forcible return of children to their fathers' families, even in cases where the reunification of the couple was not possible. The authorities have used bailiff services for this purpose (despite the absence of a court order).

10. One of the main ways of alienating a child from its mother is so-called family abduction. This often includes the involvement of relatives and friends in addition to, or instead of, that of the father. On 23 November 2021, the Court issued a judgment in the case of Tapayeva and Others v. Russia (24757/18), which concerned family "kidnapping". For the first time, the Court defined the practice of transferring children to the father's family and clans in divorces in the North Caucasus as discriminatory⁶.

B) The impact of the separation on the children

11. In 2015, the father of Lisa Tapaeva's deceased husband took all four of her daughters (aged 2, 5, 6 and 7). For many years, the applicant tried to get the children back through the courts. In 2017, the Supreme Court of the Chechen Republic referred the case for review to the same district court which had rejected her previous claims. The case was decided in the applicant's favour. However, the decision in the case was not enforced, and the applicant did not know where her children were. In 2018, as a result of a review of the applicant's case, the children were handed over to the applicant's father-in-law⁷.

12. According to Written Observations of the Centre for Peacebuilding and Community Development (PBUC) of February 8, 2019 in *Tapayeva*, there has been a high divorce rate in Chechnya for the past few decades. A colossal number of people (children) have grown up and are growing up without a mother. Psychologists practicing in Chechnya say that many of their adult clients come to them with mental health problems that have been caused by separation from their mothers after their parents' divorce⁸.

(C) Reaction of the authorities

13. The policy of upholding the status quo, whereby in case of divorce or loss of partner, children are taken away from their mothers and handed over to the male clan, occurs with a complete lack of participation by the federal centre.

- Courts

⁵ Grozny.inform, at: <http://www.grozny-inform.ru/main.mhtml?Part=17&PubID=90307>

⁶ p. p. 112 – 119 of decision

⁷ Tapayeva and Others v. Russia No(s). 24757/18

⁸ In Topaeva's case, a psychologist concluded that the children had post-traumatic stress disorder because they had not seen their mother for a long time, at: <https://novayagazeta.ru/articles/2021/11/23/espch-prisudil-bolee-16-tysiach-evro-kompensatsii-chechenke-kotoroi-svekor-zapreshchaet-obshchatsia-s-detmi-news>

14. On the formal side, the courts, in the vast majority of cases, follow the letter of the law and recognise the custody of the mothers. However, the official legal obligations to comply with court decisions do not, in practice, ensure that they are actually enforced. For example, the applicant can challenge the inaction of the bailiffs. But even the recognition of her claim against the bailiffs does not guarantee that the decision in her case will be enforced. The circle of appeals, inaction, and non-execution can go on for many years, and the total period of separation from the child can be as long as 10 years or more from the time the child is taken away from the mother⁹.

15. The situation is the same in the cases in which the applicants have won claims brought against Russia. Although the government has been paying the applicants court-ordered amounts of compensation and reporting on the cases won to the Committee of Ministers, thus not "forgetting" the situation, in terms of recognising the violation of the applicants' rights to family life, the ECtHR judgments have not been implemented for years. For example, in the case of Zelikha Magomadova, her husband's relatives had declared her "promiscuous" and sought to deprive her of her maternal rights in a local court. Later, with the help of SJI, the woman won her case in the ECtHR, but was never able to meet her children¹⁰. In addition, after ten years, they had grown weary of her and had begun to judge her, thus copying her in-laws' attitudes¹¹.

- Administrative control

16. With regard to administrative mechanisms - neither mothers nor their children receive any attention or support from the federal centre and are left at the mercy of the initiatives and approach of the local authorities. The attitude of the federal authorities to family problems in the North Caucasus is best represented by the position of Anna Kuznetsova, the Commissioner for Children's Rights until 2021, and her consistent failures to assume responsibility in crises concerning the removal of children from their mothers in the region. Despite her involvement in isolated crisis situations, such as the case of Aisha Azhigova, who was separated from her mother and beaten half to death by her own relative¹², the commissioner has not taken any steps to address the systemic problem of child removal¹³.

17. The same lack of involvement was characteristic of Kuznetsova's attitude to other issues as well: female circumcision of underage girls and the problem of early marriages in the North Caucasus.

⁹ See for instance SJI submission to the Committee of Ministers of the Council of Europe of 27 January 2022, paras 10-15, at: [https://hudoc.exec.coe.int/eng?i=DH-DD\(2022\)181E](https://hudoc.exec.coe.int/eng?i=DH-DD(2022)181E)

¹⁰ Ibid., at para 16 – 20.

¹¹ "Children belong to the father's lineage". Why children are separated from their mothers in the Caucasus and where women can get help, Lydia Mikhalechenko//These Cases - 2022-22 July, at: <https://takiedela.ru/notes/deti-prinadlezhat-rodu-otca/>

¹² Beaten girl from Ingushetia meets her mother for the first time in a year//NewsRu// 2019-18 September, at: <https://news.ru/society/izbitaya-devochka-iz-ingushetii-vstretilas-s-materyu-vpervye-za-god/>

¹³ Mother of all Russia. Why children's ombudsman Anna Kuznetsova does not suit either liberals or conservatives// Novaya Gazeta - 2020 - 1 July, at: <https://novayagazeta.ru/articles/2020/07/01/86097-matushka-vseya-rusi>

According to commentators, the reason for her inaction was due to her close connections to the presidential administration and to the president himself.

18. In its Concluding observations of 25 February 2014, the Committee expressed its concern about the harmful practices against girls and women in the North Caucasus. The Committee focused on the themes of "honour killings", "bride kidnapping", as well as on the persistence of child marriages of girls and of polygamy, in that region and in others. Furthermore, there is no doubt that the illegal and violent removal of children from maternal care is based on medieval norms that are applied with the full connivance of the federal centre.

19. In the same observations, the Committee expressed its deep concern that the position of commissioner is directly linked to the Office of the President and not to the Parliament. While we believe that nothing will ultimately change from the reassignment of the commissioner from the Office of the President to the Parliament, we would still like to express our concern about the ideological and political standards that have guided the past commissioner and, since these standards have not been abolished, it follows logically that they will continue to guide and inform the policies of the new one.

(D) Recent initiatives by the authorities

20. In December 2020, with reference to the ECtHR judgment in the case of Muruzheva v. Russia (No. 62526/15) the Russian authorities published a draft law introducing criminal liability for debtors in the event of non-compliance with a court decision on determining a child's place of residence. Certainly, the introduction of criminal liability for refusal to obey a national court decision increases the number of possible sanctions against debtors who refuse to comply with a local court decision. Nevertheless, it is not at all clear when the rule will come into force. Moreover, there are concerns that it may not be able to resolve the complexity of the issues raised in cases such as that of Tapaeva, for example. At the very least, there is a risk that the draft law may fail to apply in a situation of seminal abduction, whereby the debtor-father is not involved in illegally holding his child, who is abducted and held by his next of kin instead¹⁴.

(E) Projected deterioration of the situation with regard to the protection of children's rights in Russia and the North Caucasus region

21. Russia's withdrawal from the Council of Europe in March 2022 deprived Russians of access to the European Court of Human Rights¹⁵.

¹⁴ Important, but not the only element // Advokatskaya Gazeta. – 2020. - 28 Dec , at:

<https://www.advgazeta.ru/mneniya/vazhnyy-no-ne-edinstvennyy-element/>

¹⁵ At the time this report was submitted, the ECtHR had issued 5 rulings concerning forcible and illegal removal of children from their mothers. All cases are related to the North Caucasus, even if the parties to the family conflict reside outside the region. A significant number of cases submitted by SJI are pending before the ECtHR.

22. Its withdrawal from the Council of Europe notwithstanding, Russia is still legally obligated to implement the Court's judgments in the existing cases. Moreover, the ECtHR has expressed its willingness to accept complaints regarding violations that occurred before the date of Russia's withdrawal from the Council of Europe. However, in July 2022, the Russian government adopted a package of laws allowing Russian bodies not to execute court decisions¹⁶.

23. Since the beginning of the aggression against Ukraine, pressure on NGOs providing assistance to women and children in the North Caucasus region and across Russia has only increased¹⁷.

24. Consequently, the policy of non-interference by the federal centre in the family and domestic policy of the North Caucasus republics will only become more entrenched, and increase the level of arbitrariness and lack of control consistently demonstrated in custody cases. Consider the case of Roza Sadakiyeva, who had filed a suit to determine the place of residence of her children, which was refused by the Magas district court. In its decision, the court did not even establish a procedure for communicating with the children, which is a very grave judicial error. The professional incompetence or complete permissiveness demonstrated by this error is characteristic of the rulings of the local courts. Her son and daughter continue to stay with their father's family and hardly ever see their mother¹⁸.

25. In its Concluding observations of 25 February 2014, the Committee expressed its concern at the pressure on the non-governmental sector¹⁹. The current situation in Russia is fraught with the potential for the total destruction of human rights work.

(E) Suggestions

26. There is no doubt that the practice of separating children from their parents, in particular from their mother and their continued upbringing without a mother has enormous psychological health consequences for the child. We therefore submit that the practice of forced and illegal paternal succession should be recognised by the government as a historical and legal vestige that must be abolished. The state must take action on this issue in order to ensure that the requirements of the Convention on the Rights of the Child be respected.

27. We propose the following specific measures:

¹⁶See the Institute of Law and International Policy chart, at: https://ilpp.ru/echr_denunciation

¹⁷ See for instance Wounded But Not Broken // Italian Institute for International Political Studies – 2022-31 Jul, at: <https://www.ispionline.it/en/pubblicazione/wounded-not-broken-russias-civil-society-times-war-34930>

¹⁸ A court in Ingushetia denied a mother the right to bring up her minor children//Radio Liberty, 2022-2 July 2022, at: <https://www.kavkazr.com/a/v-ingushetii-materi-otkazali-v-prave-vospityvatj-maloletnih-detey/31880331.html>

¹⁹ p.p. 18, 19

- The Russian government should take the legislative measures necessary to abolish the concept that children "belong" to the father's side in the North Caucasus and ensure that women have equal parental rights in all cases.
- The Russian government must guarantee the right of the child to the care of his/her parents as set out in article 7 of the Convention on the Rights of the Child.
- The Russian government should take special measures to monitor the implementation of court rulings in favour of maternal guardianship that are issued by judicial bodies in the territories of the North Caucasus republics.
- The Russian government should take all measures to ensure that NGOs, activists and lawyers/advocates are active in the field of children's rights.