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# Submission to the UN Human Rights Council's Universal Periodic Review Working Group on its fourth review of the Russian Federation

**5 April 2023**

## Overview

1. These submissions are communicated by the European Human Rights Advocacy Centre ['EHRAC'][1] Memorial Human Rights Defence Centre ['Memorial'] and Stichting Justice Initiative ['SJI'][2], to the UN Human Rights Council's Universal Periodic Review Working Group ['Working Group'] to inform its fourth review of the Russian Federation's ['the State'] human rights record. They address the State's failure to make any progress since the Working Group's last review in 2018 in effectively investigating and resolving enforced disappearances perpetrated between 1999 – 2006 by Russian security forces in the Chechen Republic and surrounding North Caucasus region.

2. The authors provide an overview of the practice of enforced disappearances during this period; litigation of these violations before the European Court of Human Rights

[1] EHRAC was set up in 2003 by a team of human rights lawyers and experts with experience of taking cases to the European Court of Human Rights. Working in support of civil society organisations, we bring strategic cases of human rights violations before international fora, raise awareness of violations and means of redress for victims, and build the capacity of individuals and organisations through mentoring, training and advocacy. EHRAC along with our partner Human Rights Centre Memorial, has represented relatives in 75 cases before the ECtHR involving hundreds of disappeared victims.

[2] SJI has been providing legal assistance to victims of human rights violations in the countries of the former Soviet Union since 2001. SJI is dedicated to the legal protection of victims of human rights violations connected to armed conflict and counter-terrorism operations, disappearances, torture and gender-based violence in the post-Soviet region.

['ECtHR']; oversight of the implementation of the Court's judgments by the Committee of Ministers of the Council of Europe ['CoM'] and the consequences of the expulsion of the State from the Council of Europe ['CoE'] on the CoM's ability to effectively oversee implementation of judgments; and the ongoing nature of the violations and their impact on relatives of disappeared victims, Chechen civil society and the climate of impunity which their lack of resolution upholds.

3. It is submitted that the ongoing nature of these violations including their continued impact on relatives and the climate of impunity that upholds the continued practice of enforced disappearances by Russian authorities coupled with the expulsion of the Russian Federation from the CoE urgently requires greater oversight of this group of cases by the human rights oversight mechanisms of the UN including through the universal periodic review of the State's human rights record. The authors respectfully set out below a list of recommendations for the Working Group to imbed in its upcoming review of the State.

## Methodology

4. In outlining the lack of state progress in this group of cases and the impact of the ongoing failures to resolve these disappearances since the Working Group's last review, the authors rely on their knowledge as representatives of the victims identified in this group of cases. The combined litigation of EHRAC, Memorial and SJI 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.

5. The authors further rely on interviews undertaken with relatives of disappeared victims in 2016 [EHRAC/Memorial], 2019 [SJI], 2021 [EHRAC/Memorial], and 2022 [SJI]. The information provided by relatives has been supplemented with reports and decisions produced by the CoM and information provided by the State to the UN Working Group of Enforced or Involuntary Disappearances ['UN WGEID'] in relation to 50 communications submitted by EHRAC on behalf of relatives of disappeared victims.

## Background

6. Enforced disappearances were a hallmark of the human rights violations perpetrated by Russian forces between 1999 – 2006 in the Chechen Republic (and broader North Caucasus region) and continue to be practised widely to this day. Estimates indicate that somewhere between 5,000 – 7,700 people were disappeared by the Russian Federation in the region between 1999 and 2006.[3]

7. The ECtHR has to date passed down judgment in relation to nearly 650 individuals whom it has found to have been forcibly disappeared in the region during the seven year period – known as the *Khashiyev* and *Akayeva* group of cases ['*the Khashiyev*

[3] Council of Europe Committee of Ministers, Decision on the H46-21 *Khashiyev and Akayeva group v. Russian Federation* (Application No. 57942/00), (Adopted by the Committee of Ministers on 16 September 2021 at the 1411th meeting of the Ministers' Deputies).

group'].[4] The ECtHR has held that, by virtue of these enforced disappearances, the State party had committed violations of the right to life and the right to be free from torture as enshrined in the European Convention on Human Rights ['the ECHR'].[5]

8. The ECtHR has repeatedly concluded that the State party has failed to undertake even the most basic of investigative steps[6] in the vast majority of disappearances including: the opening of investigations, the questioning of obvious witnesses and suspects,[7] the sharing of information with investigators by security forces, the conducting of autopsies or forensic medical tests, and even the establishment of necessary facilities for investigation within the region – such as a laboratory within the Chechen Republic that is capable of identifying human remains.[8]

9. Instead, the investigations have been riddled with perpetual delays and recurrent suspensions, as well as ill-treatment of family members including repeated failures to provide families with access to case files.[9]

10. The nature of the ongoing violations and failure to investigate have been found to be so systemic that, in 2012, in the landmark case of *Aslakhanova and others v Russia*, the ECtHR departed from its well-established practice by providing detailed guidance to the Russian Federation on the general and individual measures it had to take to address the investigative failures in the region.[10] Noting the failure of the criminal investigations to produce any concrete results as related to the determination of the fate of the disappeared persons, the Court ordered the urgent creation of a single, sufficiently high-level body in charge of solving disappearances in the region with the exclusive aim of determining the fate of the victims. The Court noted that this body would enjoy unrestricted access to all relevant information and would work on the basis of trust and partnership with the relatives of the disappeared.[11]

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[4] 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 'H/Exec(2016)5 - 25 May 2016 *Khashiyev* 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 disappeared persons – Memorandum prepared by the Department for the Execution of Judgments of the European Court of Human Rights'

[5] Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14*, 4 November 1950, ETS 5.

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

[7] *Aziyevy v Russia Application* No. 77626/01, judgment of 20 March 2008; See also *Baysayeva v Russia Application* No.74237/01 judgment of 5 April 2007 [Lack of questioning of key suspects even extends to instances where the authorities were in possession of video footage showing the individuals responsible for the disappeared person's arrest yet failed to question them].

[8] Committee on Legal Affairs and Human Rights, *Human rights in the North Caucasus: what follow-up to Resolution 1738 (2010)?*, 21 January 2013, Reference 14083, para 61: ["*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."*].

[9] *Aslakhanova v Russia*, Application No. 2944/06 and others, judgment of 18 December 2012.

[10] *Aslakhanova and others v Russia*, Application No. 2944/06, judgment of 18 December 2012 para 221; The ECtHR's findings in *Aslakhanova* have been re-affirmed in numerous recent judgments see e.g. *Murdalovy v Russia*, No. 51933/08, judgment of 31 July 2020 para 54 [The Court has already found that a criminal investigation does not constitute an effective remedy in respect of disappearances occurring in Chechnya between 1999 and 2006 in particular, and that such a situation constitutes a systemic problem under the Convention (see paragraph 51 above).]

[11] *Aslakhanova*, *ibid*, para 225.

11. In accordance with Article 46 of the ECHR, the Russian Federation's progress in executing the *Khashiyev* group of judgments has been under supervision by the CoM since 2011. The CoM has issued 18 decisions and a host of resolutions which include general and specific recommendations to the Russian Federation on how it should progress toward execution of the judgments.[12]

12. Many of the CoM's decisions have been issued since the Working Group's most recent review of the State's human rights record in 2018. Notably, on 16 September 2021, the CoM concluded that there remain 650 unresolved disappearances in this group of cases.[13] In its 3 December 2020 review, the CoM noted that only two victims had been found and, by the Russian Federation's own account, the last identification of a missing person occurred in 2015 and was not attributable to the efforts of the Russian authorities.[14]

13. In June 2022, the CoM called on the Russian Federation to "urgently create an ad hoc humanitarian body to search for missing persons using modern scientific knowledge in a procedure complementary to investigations, taking inspiration from the work and mandates of bodies responsible for the search of missing persons in other member States".[15]

14. On 16 March 2022, the Russian Federation was expelled from the CoE.[16] On 16 September 2022, the State ceased to be a party to the ECHR however, under the Convention, the State has a binding legal obligation to implement judgments and decisions from the Court.[17] Despite this clear obligation, the State has completely ceased to engage with the CoM implementation mechanisms including by failing to provide action plans outlining the steps it has taken and intends to take to implement the *Khashiyev* group of judgments. These actions have sparked fear among the relatives of disappeared victims and their representatives that the State considers these cases fully resolved and will not take any further steps to remedy the violations.

**The ongoing nature of the violations and the suffering of relatives of disappeared victims**

[12] *Khashiyev and Akayeva v Russia*, 57942/00 Case Documents, https://hudoc.exec.coe.int/eng#{%22EXECIdentifier%22:[%22004-9%22],%22EXECDocumentTypeCollection%22:[%22CEC%22],%22EXECTitle%22:[%22khashiyev%22]} [accessed on 16 July 2021].

[13] Council of Europe Committee of Ministers, Decision on the H46-21 Khashiyev and Akayeva group v. Russian Federation (Application No. 57942/00), (Adopted by the Committee of Ministers on 16 September 2021 at the 1411th meeting of the Ministers' Deputies).

[14] Council of Europe Committee of Ministers, Decision on the H46-21 Khashiyev and Akayeva group v. Russian Federation (Application No. 57942/00), (Adopted by the Committee of Ministers on 3 December 2020 at the 1390th meeting of the Ministers' Deputies).

[15] Council of Europe Committee of Ministers, Decision on the H46-21 Khashiyev and Akayeva group v. Russian Federation (Application No. 57942/00), Adopted by the Committee of Ministers on 8 – June 2022 at the 1436th meeting of the Ministers' Deputies, available at: https://hudoc.exec.coe.int/eng#{%22EXECIdentifier%22:[%22HEXEC(2020)2-RUS-GROUP-Khashiyev-ENG%22]}

[16] Council of Europe, Committee of Ministers, Decision on Consequences of the aggression of the Russian Federation against Ukraine, 1428ter meeting, 16 March 2022, CM/Del/Dec(2022)1428ter/2.3, available at: https://search.coe.int/cm/pages/result_details.aspx?objectid=0900001680a5d7d9.

[17] Council of Europe, Committee of Ministers, Resolution CM/Res(2022)3 on legal and financial consequences of the cessation of membership of the Russian Federation in the Council of Europe (Adopted by the Committee of Ministers on 23 March 2022 at the 1429bis meeting of the Ministers' Deputies), available at: https://search.coe.int/cm/pages/result_details.aspx?objectid=0900001680a5ee2f

15. It is now widely accepted that enforced disappearances are a continuous crime which only come to an end once the State has met its obligation to fully remedy and resolve all elements of the crime including, most significantly, determination of the fate of the victims and return of the victims' remains to their loved ones for burial.[18]

16. Further, in its failure over many years to fully remedy the violations identified by the ECtHR, the State continues to violate the prohibition on torture and other cruel, inhuman or degrading treatment vis-à-vis the relatives of the disappeared as enshrined in numerous conventions the State has ratified and on the basis of which the Working Group will be grounding its assessment of the State's human rights record.[19]

17. The Human Rights Committee[20], ECtHR[21], Inter-American Commission and Court of Human Rights[22] and WGEID[23] have all recognised that the suffering caused to the relatives by the disappearance of their loved ones and the continued anguish that comes with not knowing the fate of their loved ones is a form of torture or cruel, degrading and inhuman treatment.

18. In addition to the anguish that comes with not knowing the fate of their loved ones the relatives of the disappeared in these cases have also been subjected to almost two decades of indifference and ill-treatment by State party authorities. The State party's conduct over the years has amounted to a blatant violation of the family members' right to truth and, in particular, to know the fate of the disappeared.[24] The

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[18] UN Working Group on Enforced or Involuntary Disappearances, General Comment on enforced disappearance as a continuous crime, 26 January 2011.

[19] UN General Assembly, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984, UN General Assembly Resolution 39/46; see also UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, UN Genderal Assembly Resolution 2200A (XXI), article 7; UN General Assembly, Declaration on the Protection of All Persons from Enforced Disappearances, 12 February 1993, A/RES/47/133 art 1(2); UN General Assembly, International Convention for the Protection of All Persons from Enforced Disappearance, 20 December 2006, Aart. 24(1); UN Committee Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *General Comment 3, Implementation of Article 14 by State Parties* 13 December 2012 CAT/C/GC/3 para 3: *["Victims are persons who have individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute violations of the Convention. […] The term "victim" also includes affected immediate family or dependants of the victim as well as persons who have suffered harm in intervening to assist victims or to prevent victimization.".]*

[20] *Case of Maria del Carmen Almedia de Quinteros v Uruguay* , Views of July 21, 1983, Inter-American Court of Human Rights, Communication No 107/1981 (17 September 1981) para 14.

[21] *Kurt v Turkey* 15/1997/799/1002, judgment of 25 May 1998, paras 130-134

[22] Annual Report of the Inter-American Commission on Human Rights, 1977, OEA/Ser.L/V/II.43 doc 21 cor 1 of April 20, 1978; *Case of La Cantuta v Peru*, Inter-American Court of Human Rights Series C No 162 (29 November 2006).

[23] UN Working Group on Enforced and Involuntary Disappearances, Reports of the Working Group, 3 December 1983, E/CN.4/1984/21 para 172; UN Working Group on Enforced and Involuntary Disappearances, *General Comment on article 19 of the Declaration on the Protection of All Persons from Enforced Disappearances*, E/CN.4/1998/43 p 4.

[24] UN Committee Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *General Comment 3, Implementation of Article 14 by State Parties,* 13 December 2012 CAT/C/GC/3 para 16: *["Satisfaction should include […] the search for the whereabouts of the disappeared […] and for the bodies of those killed, and assistance in the recovery, identification, and reburial of victims' bodies in accordance with the expressed or presumed wish of the victims or affected families*"]; UN Working Group on Enforced and Involuntary Disappearances, *General Comment on the right to the truth in relation to enforced disappearances*, A/HRC/16/48, January 26, 2011 p 4: ["*the right of the relatives to know the truth of the fate and whereabouts of the disappeared persons is an absolute right, not subject to any limitation or derogation. […] This absolute character also results from the fact that the enforced disappearance causes "anguish and sorrow" […] to the family, a suffering that reaches the threshold of torture, In this regard, the State cannot restrict the right to know the truth about the fate and the whereabouts of the disappeared as such restriction only adds to, and prolongs, the continuous torture inflicted upon the relatives."].*

ECtHR has found that the extent of the family member's suffering has been exacerbated where the applicant has been denied or delayed victim status, denied access to case files or information about the investigation, or directly subjected to threats or other degrading treatment by State authorities.[25]

19. As a consequence of these ongoing violations the families of disappeared persons have faced severe and disproportionate psychological, social, economic and legal challenges.[26] A 2009 study by the International Committee of the Red Cross ['the ICRC'] revealed that 72% of families interviewed faced economic difficulties related to losing their primary breadwinner, spending money on efforts to locate their loved one and disruption in employment caused by psychological disturbances related to the disappearance – from which 30 – 45% of family members reported suffering[27] – or the lack of available work in their community.[28] The clinical psychologist who assessed the study's data set found that many of those surveyed exhibited a presence of depressive and anxiety disorders. [29]

20. While men were disproportionately disappeared during the conflict, enforced disappearances have had a significant impact on women in Chechnya and the North Caucasus. Women made up approximately 70% of the applicants before the ECtHR.[30] Women were left behind to pick up the pieces of the family and community life and to bring the stories of their loved ones into the public realm despite significant threats and intimidation from authorities. Almost two decades following the disappearance of their loved ones, women continue to lead the fight for truth and justice for the victims of enforced disappearances in Chechnya. In addition to their role as actors in the fight for justice for their loved ones, women who have lost their husbands or sons have experienced some of the worst long-term effects of the ongoing violations because of deeply rooted gendered norms, roles and stereotypes.[31]

21. Enforced disappearances have also had a disproportionate impact on older people in the North Caucasus. The widespread disappearances of young men aged 18 – 40 saw a generation of parents lose their children – some lost multiple children to the practice of enforced disappearances – and others live in fear of their child being apprehended.

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[25] *Khamila Isayeva v Russia*, Application no. 6846/02, judgment of 15 November 2007 para 132 and 144.

[26] International Committee of the Red Cross, *Families of Missing Persons: Responding to their Needs,* 27 September 2010 available at: https://www.icrc.org/en/doc/resources/documents/report/russia-publications-300810.htm [accessed 13 January 2021]; see also Submission to the CoM by SJI of 18 November 2019: https://hudoc.exec.coe.int/ENG?i=DH-DD(2019)1425E

[27] International Committee of the Red Cross, *Families of Missing Persons: Responding to their Needs,* 27 September 2010 p 5 available at: https://www.icrc.org/en/doc/resources/documents/report/russia-publications-300810.htm [accessed 13 January 2021]

[28] International Committee of the Red Cross, *Families of Missing Persons: Responding to their Needs,* 27 September 2010 p 6 available at: https://www.icrc.org/en/doc/resources/documents/report/russia-publications-300810.htm [accessed 13 January 2021].

[29] *Ibid*.

[30] Phil's article.

[31] See generally UN Commission on Human Rights, *Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk*, 26 January 2006, E/CN.4/2006/61/Add.2 p 14-15.

22. In addition to the severe trauma and psychological strain suffered by older people, evidence gathered by the ICRC indicates that many older people have experienced isolation and weakened social bonds as a result of the disappearances.[32] Enforced disappearances have also had a disproportionate impact on the economic security of older people in the North Caucuses who rely on children and particularly sons to support the family in their old age.[33] More than half of these respondents reported that this income was insufficient to cover the family's basic needs and "mentioned cutting on clothes, wood, healthcare and even food".[34]

**The relationship between the unresolved disappearances in the *Khashiyev* group and the climate of impunity for human rights violations in the North Caucasus**

23. Enforced disappearances undermine the family's and society's ability to know what events took place leaving them in a state of perpetual uncertainty where they continue to reconstruct endless versions of the events in question. For this reason, enforced disappearances are most often used as a strategy to "terrorise a population much larger than the direct victims of violence, creating ambient unlocatable fear"[35] and against an ethnic, religious or otherwise identifiable community.[36] The widespread practice of enforced disappearance, though perpetrated against specific individuals, has been found to have devastating effects for the targeted community who live in a climate of profound fear and uncertainty.[37]
24. Where enforced disappearances are used as a systemic practice to oppresses identifiable communities, states must take additional measures to address the specific impact of enforced disappearances against the impacted community. For example, the Parliamentary Assembly of the Council of Europe has noted the obligation to undertake measures to prevent enforced disappearances which are perpetrated "based on racial or any other form of discrimination and duly investigating any such cases".[38]

25. Evidence demonstrates that Russia has used the practice of enforced disappearances to create a climate of profound fear within the Chechen community and, thereby, dismantle civic participation and dissent. It is submitted that the State's motive of spreading fear among the Chechen population can be discerned by the disproportionate use of enforced disappearances against the Chechen community and widespread practices of arbitrary detentions and inspections of ethnic Chechens by law enforcement authorities across Russia during the war and in the years that

[32] ICRC page 6.
[33] ICRC p 6.
[34] ICRC page 7.
[35] Christina Varvia, Unlocatable Violence, Völkerrechtsblog, 19 December 2020, available at: https://voelkerrechtsblog.org/de/unlocatable-violence/; Office of the High Commissioner for Human Rights, "Enforced or Involuntary Disappearances", Factsheet No. 6/Rev.3, 2009, p. 2, available at: https://www.ohchr.org/sites/default/files/Documents/Publications/FactSheet6Rev3.pdf [accessed 13 February 2023]; see also UN General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, United Nations, Treaty Series, vol. 1465 art. 1; Basic Principles on Remedy, *supra* note 75, preamble: ["contemporary forms of victimization, while essentially directed against persons, nevertheless [can] also be directed against groups of persons who are targeted collectively"].
[36] See e.g. IACHR, *Case of Chitay Nech et al. v. Guatemala*, Judgment of May 25, 2010, Series C No. 212.
[37] see e.g. *Chitay Nech et al. v. Guatemala*, *ibid*, paras 108, 113 and 116.
[38] PACE Resolution, 2425, *supra* note 3.

follow.[39]

26. On 30 October 2000 Amnesty International wrote to the governments of the participating states of the European Union expressing concern that, unless concerted and sustained action was taken to address the widespread impunity for the grave human rights violations suffered by Chechens, 'their future in Russia is that of a subjugated, conquered people'.[40] The widespread and systematic attack on the Chechen community in the 1990s and early 2000s and the ongoing impunity for the violations perpetrated during this time continue to have serious implications for the equal enjoyment of rights by ethnic Chechens in the North Caucasus region and Russia more broadly.[41]

27. The UN CAT has recognised the link between impunity and the risk of human rights violations against marginalised groups and has called on states to "ensure the protection of members of groups especially at risk of being tortured, by fully prosecuting and punishing all acts of violence and abuse against these individuals".[42] The CoM *Guidelines on Eradicating Impunity For Serious Human Rights Violations* emphasize that "the full and speedy execution of the judgments of the Court is a key factor in combating impunity" and also explicitly state that "[c]ombating impunity requires that there be an effective investigation in cases of serious human rights violations. This duty has an absolute character."[43]

28. In 2012, in *Aslakhanova,* the ECtHR affirmed the situation of impunity in the Chechen Republic and surrounding regions that is upheld by the failure to implement the *Khashiyev* group of judgments. It noted that, in more than 120 judgments, it had found violations of the same rights in similar cases resulting from enforced disappearances in the Northern Caucasus since 1999 and concluded that the accumulation of these breaches constituted a practice that was "incompatible with the Convention".[44]

29. The impunity upheld by the failure to fully resolve the thousands of disappearances perpetrated by Russian forces in Chechnya and surrounding regions has resulted in the widespread practice of enforced disappearances in Chechnya and surrounding regions including the 2017 and 2018 anti-LGBT raids which saw law enforcement

[39] United Nations Committee on the Elimination of Racial Discrimination, Concluding observations of the Committee on the Elimination of Racial Discrimination, CERD/C/62/CO/7, (2 June 2003) para 13; see also AI *Russian Federation: Chechen Republic - Open letter to the participants of the EU-Russia summit* citing - Alexander Oboidikhin to *The Moscow Times*, article entitled "Cops are counting arrested Chechens" by Oksana Yablokova, 2 September 2000; see also For the Motherland (AI Index: EUR 46/46/99) detailing police abuses during the time of the Moscow Mayor Yury Luzhkov.

[40] AI *Russian Federation: Chechen Republic - Open letter to the participants of the EU-Russia summit EUR 46/44/00 (30 October 2000) at page 5.*

[41] Fourth Opinion on the Russian Federation (2018), the Framework Convention for the Protection of National Minorities Advisory Committee, p 14.

[42] UN Committee Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *General Comment 2, Implementation of Article 2 by State Parties,* 24 January 2008 CAT/C/GC/2 para 22: *["States parties should, therefore, ensure the protection of members of groups especially at risk of being tortured, by fully prosecuting and punishing all acts of violence and abuse against these individuals and ensuring implementation of other positive measures of prevention and protection, including but not limited to those outlined above."];* UN Working Group on Enforced and Involuntary Disappearances, *Report of the Working Group on Enforced or Involuntary Disappearances,* 23 January 1985 E/Cn.4/1985/15.

[43] Eradicating impunity for serious human rights violations: Guidelines adopted by the Committee of Ministers on 30 March 2011 at the 1110th meeting of the Ministers' Deputies, available at https://rm.coe.int/1680695d6e

[44] *Aslakhanova and others v Russia*, ECHR, Application No. 2944/06, judgment of 18 December 2012, para 217.

rounding up dozens of men on suspicion of being gay, torturing and humiliating the victims before forcibly disappearing some of them. In the autumn of 2020, the Chechen opposition telegraph channel 1ADAT published statistics on their observations of enforced disappearances finding that, between April and October of that year alone, security forces in the republic kidnapped more than 1,500 people.[45]

30. In November 2018, 16 participating states of the Organization for Security and Co-Operation in Europe invoked the organization's "Moscow Mechanism" and appointed a rapporteur to look into allegations of abuses in Chechnya, including the 2017 anti-gay purge. In his December 2018 report, the rapporteur concluded that Chechen authorities were responsible for very serious human rights violations including torture, enforced disappearances and extrajudicial executions, and found "several waves of violations of human rights and abuses of persons based on their sexual orientation and gender identity...". The Rapporteur concluded that "no evidence could be found about cases where law enforcement officers were brought to justice because of the human rights violations or violations of the law committed by them. Accordingly, *there is a climate of impunity which is detrimental to any accountability for human rights violations*. On the contrary, those from civil society or the media who investigate human rights violations become targets of repression," [Emphasis added].[46]

31. Enforced disappearances have also become a systemic practice used by Russian forces across Ukraine. The systemic practice of enforced disappearances by Russian forces in Crimea was recognized by the ECtHR in *Ukraine v Russia (re Crimea)* with the Court finding that there was sufficient *prima facia* evidence of the alleged administrative practice of enforced disappearances on the peninsula.[47] It is now well-documented that enforced disappearances in Crimea have been targeted at ethnic communities, particularly Crimean Tatars. PACE, the European Parliament, and the UN Committee on Elimination of Racial Discrimination have all noted the targeting of Crimean Tatars as victims of enforced disappearances in Crimea immediately prior to and following the annexation by the Russian Federation.[48] The UN Office of the High Commissioner for Human Rights ['OHCHR'] has also documented the targeting of enforced disappearances against persons linked to the

[45] Kavkaz. Realii " The 1ADAT movement told of 1,500 people kidnapped in Chechnya in six months", 28 October 2020: https://www.kavkazr.com/a/30917066.html

[46] OSCE Rapporteur's Report under the Moscow Mechanism on alleged Human Rights Violations and Impunity in the Chechen Republic of the Russian Federation by Professor Dr. Wolfgang Benedek, December 21, 2018, available at https://www.osce.org/files/Moscow%20Mechanism%20Document_ENG.pdf.

[47] *Ukraine v. Russia (re Crimea),* 16 December 2020, paras 401-404.

[48] PACE, Resolution 2387 (2021), Human rights violations committed against Crimean Tatars in Crimea, available at: https://pace.coe.int/en/files/29360/html paras 4 and 13.3.1; European Parliament, Resolution of 12 May 2016 on the Crimean Tatars, available at https://www.europarl.europa.eu/doceo/document/TA-8-2016-05-12_EN.html#sdocta1, para B; UN Committee on Elimination of Racial Discrimination, Concluding observations on the twenty-third and twenty-fourth periodic reports of the Russian Federation, available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD%2FC%2FRUS%2FCO%2F23-24&Lang=en para 19.

Mejlis or other Crimean Tatar institutions.[49]

32. The use of enforced disappearances against Crimean Tatars and other ethnic communities in Crimea has been aimed at spreading fear among these communities and suppressing opposition to the occupation.[50] This is evidenced by the fact that victims of enforced disappearances are most often those expressing support for Ukrainian territorial integrity, participating in the Euromaidan protests, opposing the Crimean status referendum or being generally perceived as 'pro-Ukrainian', as well as journalists and former and active Ukrainian servicemen.[51] The fear-spreading aim of enforced disappearances as perpetrated in Crimea is further evidenced by findings by the OHCHR that victims of enforced disappearances have been subjected to torture and other ill-treatment with the aim of identifying and testifying against others who hold similar political positions or as retaliation for the victim's political affiliation or position.[52]

## Conclusion and Recommendations

33. There has been no progress since the Working Group's 2018 review of the State party's human rights record in resolving the thousands of enforced disappearances perpetrated by Russian forces in the North Caucasus region between 1999 – 2006.

34. The relatives of disappeared victims continue to suffer daily with the anguish of not knowing what happened to their loved ones. The systemic practice used during this period and the ensuing failure to investigate has created a climate of fear among Chechen civil society and upholds impunity for the practice of enforced disappearances by Russian forces that is having devastating consequences in Chechnya and Ukraine.

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[49] OHCHR, HRMMU, Enforced disappearances in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, temporarily occupied by the Russian Federation, Briefing Paper, 31 March 2021, available at https://ukraine.un.org/sites/default/files/2021-03/BN%20Enforced%20dis%20Crimea%20ENG.pdf, p 4 and 6; [OCHRR Briefing Paper 2021] see also HRMMU, Update on the human rights situation in Ukraine, 1 August – 31 October 2022, available at https://www.ohchr.org/sites/default/files/documents/countries/ua/2022-12-02/HRMMU_Update_2022-12-02_EN.pdf.; OHCHR, Report on the situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, 13 September 2017 to 30 June 2018, available at https://www.ohchr.org/sites/default/files/Documents/Countries/UA/CrimeaThematicReport10Sept2018_EN.pdf, para 32; OHCHR, Report on the situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, 1 August 2021 to 31 January 2022, available at https://www.ohchr.org/sites/default/files/2022-03/33rdReportUkraine-en.pdf, para 94; UNGA, Situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, Report of the Secretary-General, 25 July 2022, available at https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/437/31/PDF/N2243731.pdf?OpenElement, para 15.

[50] See ICJ, Case concerning application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of all Forms of Racial Discrimination (Ukraine v. Russian Federation), Memorial of Ukraine, available at https://www.icj-cij.org/public/files/case-related/166/166-20180612-WRI-01-00-EN.pdf, para 392.

[51] OSCE/ODIHR and HCNM, Human Rights Assessment Mission in Ukraine: Human Rights and Minority Rights Situation, Report, 12 May 2014, available at https://www.osce.org/files/f/documents/d/3/118476.pdf, para 6; HRW, Rights in Retreat: Abuses in Crimea, 17 November 2014, available at https://www.hrw.org/report/2014/11/17/rights-retreat/abuses-crimea; Amnesty International, One Year On: Violations of the Rights to Freedom of Expression, Assembly and Association in Crimea, Report, 2015, available at https://www.amnesty.org/en/documents/eur50/1129/2015/en/, p 8; OHCHR, Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine), 25 September 2017, available at https://www.ohchr.org/sites/default/files/HRBodies/HRC/RegularSessions/Session36/Documents/A_HRC_36_CRP.3_E.docx para 101; see also OHCHR Briefing Paper 2021, *supra* note 8, p 5.

[52] OHCHR Briefing Paper 2021, *Ibid*, p 1, 6.

35. Russia's expulsion from the CoE raises difficult questions regarding the State's position on its obligation to fully implement the ECtHR's judgments including its ongoing obligation to determine the fate of victims.

36. In light of the above, the authors respectfully call on the Working Group to include the following critical elements in its recommendations to the State:

    a. Explicitly reference and address the many ongoing violations of enforced disappearances from 1999 – 2006 in the North Caucasus region. These enforced disappearances require a distinct approach from the State and from the monitoring global community in order to reach effective resolution;

    b. Stress the State's ongoing obligation, despite its departure from the CoE, to fully resolve this group of disappearances; and,

    c. Demonstrate a clear focus on the suffering of the relatives of the disappeared victims by tailoring recommendations toward the urgent need for the State to create a single independent high-level body engaging international expertise and with the exclusive aim of determining the fate of the victims.