

**The right not to return: the situation of displaced Chechens
dispersed in the Russian Federation**

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Introduction

After a period out of the headlines, the predicament of Chechens displaced by the conflict in Chechnya rose to international prominence in December 2002, when the closure of Aki Yurt camp in Ingushetia and the eviction of its residents provoked an international outcry. Since then the issue has been largely forgotten again by the international media, though pressure continues to be exerted in various ways on the camp residents to return to Chechnya.

A number of international and Russian human rights and humanitarian organisations, notably the Russian Presidential Human Rights Commission, Human Rights Watch, Médecins sans Frontières and the Norwegian Helsinki Committee have made reports of fact finding missions to the region in late 2002 and early 2003 available online. However, the purpose of all of these reports was to provide an overview of the human rights and humanitarian situation on the ground, rather than to engage in legal analysis of the situation. This paper seeks to draw on such materials to analyse the treatment of displaced Chechens in the context of the Russian Federation's treaty obligations. It relies on a variety of secondary sources from international organisations, treaty monitoring bodies, local and national human rights NGOs, the Russian Federal government, the mass media, and academics. As many of the developments and reports on the situation are very recent, the research is largely internet based.

The study will begin with an overview of the pressures the displaced in Ingushetia face to return to Chechnya. This will be followed by a chapter detailing the impact of the domestic legal and administrative order in the Russian Federation on their situation. The next chapter will consider in which ways actions and omissions of the authorities with regard to displaced contravenes the country's treaty obligations. The paper will conclude with an overview of some of the legal and non-legal remedies available to improve the situation.

Chapter 1 – Background to the situation

Evolution of the conflict

Chechnya and Ingushetia border each other in the North Caucasus mountains, surrounded by Russian Federal regions and Georgia. The Chechens and Ingush are very close ethnically.¹ They and their ancestors are believed to have lived in the area for six thousand years.² As part of Russia's imperial expansion, its forces entered the North Caucasus in 1783 and soon established a permanent presence. The first major Chechen resistance movement appeared in 1785. Ever since there have been periodic Chechen uprisings against Russian rule. In 1944, after a few Chechen and Ingush fighters allied themselves with German invaders,³ the entire 500,000-strong combined Chechen and Ingush population, along with other "punished peoples", was deported to Central Asia. Tens of thousands died on the journey and on arrival –around a quarter of the deportees died between 1944 and 1948 alone.⁴ The Chechens and Ingush were officially rehabilitated and returned to the North Caucasus in 1956.

Chechnya declared independence when the Soviet Union dissolved in 1991. This was disputed by the Russian authorities who tried unsuccessfully to reassert control in Chechnya. For three years the Republic was *de facto* politically independent, while remaining economically dependent on Russia.⁵ In this period some 150,000 non-Chechens left the republic, primarily for other parts of the Russian Federation.⁶ Then, in December 1994, Russia launched a full-scale invasion. A two-year guerrilla war ensued, during which most of the remaining non-Chechen population fled the republic.⁷ The conflict also displaced quarter of a million Chechens into Ingushetia and other parts of the Russian Federation, as well as internally within Chechnya.⁸ The conflict subsided with a ceasefire agreement in 1996, which led to the full withdrawal of Russian troops from Chechnya. There was no final status agreement, but Chechnya was again left *de facto* politically independent.⁹ In the year after the agreement many of the displaced Chechens returned to their homes, though some, especially those who had been allied with the Russian government, felt unable to return.¹⁰ Most of the displaced non-Chechens did not return.¹¹

A 1997 Presidential election in Chechnya was won by Aslan Maskhadov, seen as the moderate candidate.¹² However, militant Chechen factions which Maskhadov was unable to control carried out raids into neighbouring Dagestan to support Islamist separatists there. Furthermore, in 1999 a series of apartment block bombings in Moscow left more than 300 people dead and were attributed by the Russian

¹ Lieven, *Chechnya: Tombstone of Russian Power* (London, Yale University Press, 1998). p70

² Dunlop, *Russia Confronts Chechnya* (Cambridge: CUP, 1998), p1

³ The uprising had begun while the Soviet Union was still allied with Nazi Germany

⁴ Gall and de Waal, *Chechnya: a Small Victorious War* (London: Macmillan Press, 1997), p61

⁵ Sirén, *The Battle for Grozny* in Fowkes (ed.) *Russia and Chechnia: the Permanent Crisis* (London: Macmillan Press, 1998), p92

⁶ UNHCR, *The State of the World's Refugees* (Oxford: OUP, 2000), p203

⁷ UNHCR, *Paper on Asylum Seekers from the Russian Federation in the context of the situation in Chechnya* (Geneva: UNHCR, 2002), p7

⁸ UNHCR, *State, supra n6*, p203

⁹ Fowkes, (ed.) *Russia and Chechnia: the Permanent Crisis* (London: Macmillan Press, 1998), p20

¹⁰ UNHCR, *State, supra n6*, pp204-205

¹¹ UNHCR, *Paper (2002), supra n7*, p21

¹² Mulvey, *Aslan Maskhadov: the quiet general* (BBC News website, 2000), at <http://news.bbc.co.uk/2/hi/europe/459302.stm>, accessed 19/08/03

authorities to Chechen terrorists. These incursions and bombings led in autumn 1999 to another invasion of Chechnya, under the pretext of an “anti-terrorist campaign.”¹³

Air strikes in September were followed by the entry of almost 100,000 Russian troops in October. Many were used to construct a “sanitary cordon” around Chechnya, controlling the republic’s borders.¹⁴ To minimise their casualties during the assault, the Russian army relied heavily on prolonged aerial bombardment and shelling of towns and villages to weaken resistance. By early 2000, Russia had retaken the Chechen capital Grozny and most of its cities, largely confining the separatists to guerrilla attacks from the southern mountains.¹⁵ However, the strategy of overwhelming force resulted in high levels of civilian casualties and massive destruction of property, and thus augmented a new exodus. In late October and early November, civilians attempting to flee on the road to Ingushetia were prevented from crossing the border, and at least one convoy of people seeking refuge came under attack from military planes.¹⁶ The Russian authorities justified the blockages by saying that “terrorists” may be escaping among the civilians.¹⁷ Unlike other local leaders, Ruslan Aushev, the then President of Ingushetia, condemned these actions and regularly intervened to open and keep open the border.¹⁸

Displacement in Ingushetia

By the beginning of 2000 some 240,000 people had been displaced from Chechnya by the new hostilities.¹⁹ Most were taking refuge in impoverished Ingushetia, increasing its population by over a half. They were accommodated wherever possible: with private families, in train carriages, disused factories or farms. With international support, the Government of Ingushetia provided assistance to the internally displaced people, as the federal government was unwilling to support displaced people in Ingushetia.²⁰ By early October 1999, the Federal government had already suggested resettling displaced people in Russian-controlled areas of Chechnya.²¹ On 17 December, the Federal Migration Service instructed regional authorities to suspend registration of new arrivals and facilitate their return to their places of origin or “safe areas” under Russian control in Northern Chechnya. On 23 December, 800 displaced people were forcibly returned to Chechnya in the train carriages that accommodated them. In response to their protests, special police fired several shots in the air and threatened to call in federal troops to force the civilians back on the train.²² However,

¹³ Dalziel, *Chechnya’s Decade of Disaster* (BBC News website, 2001), at <http://news.bbc.co.uk/2/hi/europe/1528890.stm>, accessed 19/08/03

¹⁴ U.S. Committee for Refugees, *More than 80,000 Chechens Flee Russian Airstrikes in September* (USCR website, 1999), at <http://www.refugees.org/news/crisis/chechnya/intro.htm>, accessed 30/07/03

¹⁵ McFaul, *US Foreign Policy and Chechnya*, (Stanley Foundation website, 2003) at <http://reports.stanleyfoundation.org/EAIrussiaB03p.pdf>, accessed 19/08/03, p12

¹⁶ see *Isayeva, Yusupova and Bazayeva v. Russia*, Admissibility Decision, European Court of Human Rights, 19 December 2002, Nos. 57947/00, 57948/00 and 57949/00

¹⁷ Sané, *Humanity is indivisible, Open Letter to the United Nations* (Amnesty Website, 1999); at <http://web.amnesty.org/library/Index/ENGEUR460381999?open&of=ENG-RUS>, accessed 26/08/03

¹⁸ Human Rights Watch, *Into Harm’s Way: Forced Return of Displaced People to Chechnya* (New York: Human Rights Watch, 2003), p5

¹⁹ UNHCR, *Paper (2002), supra n7*, p7

²⁰ Norwegian Helsinki Committee, *The Ethnic War: Persecution of Chechens in the Russian Federation*, (Oslo: Norwegian Helsinki Federation, 2002), p8

²¹ Lambroschini, *Russia: Moscow To Help Refugees Return to Chechnya* (RFE/RL website, 5 October 1999), at <http://www.rferl.org/nca/features/1999/10/F.RU.991005125944.html>, accessed 21/08/03

²² Cartner, *Letter to Putin Protests Forcible Repatriation of Chechens* (Human Rights Watch website,

after this incident forced return ceased and registration of new arrivals largely continued in Ingushetia until April 2001.²³

There were some attempts by the authorities in 1999 and 2000 to relieve population pressure in Ingushetia by voluntarily relocating displaced families elsewhere in the Russian Federation.²⁴ However, relocation proved unsuccessful, because of both the reluctance of other local authorities to provide accommodation to the Chechens, and the reluctance of the Chechens themselves to travel further from their homeland to less welcoming regions.²⁵ Some Chechens also went to live with relatives in other parts of the Russian Federation, notably in Moscow. However these people face serious problems regarding residence requirements, which will be discussed in the next chapter.²⁶ The majority of the people displaced by the conflict remained in Ingushetia.

From autumn 1999, the presence of international humanitarian organisations increased in Ingushetia and they established new tent camps. As of September 2003, there are officially recognised five tent camps for displaced families from Chechnya in Ingushetia.²⁷ A sixth camp at Aki-Yurt was closed by the authorities in December 2002.

The official camps all have populations numbering in the thousands.²⁸ The Ingushetian social infrastructure has been unable to cope with the influx, and the majority of displaced people have limited access to medical facilities and schools.²⁹ The educational and healthcare facilities and food aid that do exist for the tent dwellers have largely been provided through international assistance.³⁰ However, gas and electricity are supplied by the Ingushetian authorities.

The camps have been described as overcrowded, unsanitary, cold, damp and unhygienic.³¹ A recent survey by Médecins sans Frontières found that 54% of families in the camps live in tents that leak and/or have no insulation and/or no floor.³² This is a serious problem in Ingushetia, where winter temperatures fall well below freezing. Epidemic diseases, anaemia, food shortages and psychiatric disorders are all common in the camps.³³ Unemployment is widespread, with most people surviving through humanitarian assistance.³⁴

1999), at <http://www.hrw.org/press/1999/dec/chech1223.htm>, accessed 21/08/03

²³ UNHCR, *Paper (2002)*, *supra* n7, p12

²⁴ *ibid.* p10

²⁵ *ibid.* pp10-11

²⁶ *ibid.* p14

²⁷ Médecins sans Frontières, *Left Without a Choice: Chechens forced to return to Chechnya* (Paris: Médecins sans Frontières, 2003), p18

²⁸ For reported figures as of February 2003, see Médecins sans Frontières, *ibid*

²⁹ UNHCR, *Paper (2002)*, *supra* n7, p10

³⁰ Norwegian Helsinki Committee, *supra* n20, p8

³¹ Gannushkina, *The Internally Displaced Persons from Chechnya in the Russian Federation 2002*

(Memorial website, 2002) at

http://refugees.memo.ru/For_All/RUPOR.NSF/0/9bf376467e69ac49c3256bd3007a8b55?OpenDocument, accessed 15/08/03.

³² Médecins sans Frontières, *supra* n27, p7

³³ Gannushkina (2002), *supra* n31

³⁴ ACCORD/UNHCR, *Eighth European Country of Origin Seminar: Country Report – Russian Federation* (Vienna: ACCORD/UNHCR, 2002), p226

Surveys indicate that, despite the conditions in the camps and although most displaced people in Ingushetia wish to return to Chechnya at some stage, the vast majority do not want to return yet.³⁵ The security situation and lack of housing are the two main reasons for this.³⁶ Despite this, the residents of the camps have been under increasing pressure from the Federal, Russian-backed Chechen and the Ingushetian authorities to return to Chechnya.

Pressure to return to Chechnya

After the train residents were forcibly returned to Chechnya in December 1999, the threat of further forced return receded.³⁷ This was largely due to the interventions by then President Aushev of Ingushetia, with international support.³⁸ However, Aushev was dismissed by the Moscow authorities in December 2001 and subsequently the conditions in the camps deteriorated.³⁹ April 2002 saw the election of President Zyazikov, who is much closer to Moscow than Aushev was.⁴⁰

Meanwhile, two tent camps in Northern Chechnya were forcibly closed in July 2002.⁴¹ Approximately two thousand residents were relocated to two temporary accommodation centres in Grozny.⁴² A further two thousand were registered for places in the centres but not provided with them on arrival, as the authorities seemingly had the expectation that more centres would open soon and existing places would become vacant.⁴³ Reports from November 2002 indicate that gas and electricity supply to the centres was erratic and prone to serious accidents, and water had to be fetched in barrels. Furthermore, residents feared the complete absence of police protection at night. Further temporary accommodation centres were established in other parts of Chechnya, but these were already full by May 2002 with people made homeless locally and returnees from Ingushetia.⁴⁴ After the OSCE reported that the conditions for returnees are even more difficult, cramped and precarious than those in Ingushetia,⁴⁵ international donors refused to fund the centres in Chechnya.⁴⁶

Despite these problems, the authorities have used a number of means to pressurise Ingushetian camp residents to return. As of April 2001, new arrivals from Chechnya have been unable to register for humanitarian assistance in Chechnya.⁴⁷ The camps have been allowed to fall into ever worse states of disrepair, as the authorities are

³⁵ UNHCR, *UNHCR's position on the May Action Plan in the Context of Current Developments in the North Caucasus* (Geneva: UNHCR, 2002), p1

³⁶ Médecins sans Frontières, *supra* n27, p11.

³⁷ UNHCR, *UNHCR's position*, *supra* n35, p1

³⁸ Human Rights Watch, *Into Harm's Way*, *supra* n18, p5

³⁹ Médecins sans Frontières, *supra* n27, p21

⁴⁰ Human Rights Watch, *Into Harm's Way*, *supra* n18, p5

⁴¹ Gannushkina, *The Internally Displaced Persons from Chechnya in the Russian Federation 2003* (Memorial website 2003) at

http://refugees.memo.ru/For_All/RUPOR.NSF/0/1c65ffedd473f3b6c3256d43007abc08?OpenDocument, accessed 15/08/03

⁴² Global IDP Project, *Chechens Pressed to Go Home* (Geneva: Global IDP Project, 2003), p6

⁴³ Gannushkina (2003), *supra* n31

⁴⁴ *ibid.*

⁴⁵ Norwegian Helsinki Committee, *supra* n20, p11

⁴⁶ Médecins sans Frontières, *supra* n27, p22

⁴⁷ UNHCR, *Paper* (2002), *supra* n7, p12

increasingly unwilling to allow international agencies to undertake maintenance work.⁴⁸ In August 2002, Federal officials distributed leaflets in the camps promising that UN agencies would provide food and non-food items and monitor living conditions on return to Chechnya, despite no agreement having been reached with these agencies.⁴⁹

The pressure on the camp dwellers increased substantially after the Moscow theatre siege in October.⁵⁰ On 25th October, federal troops set up five permanent positions in the camps, allegedly “to prevent attacks by terrorist groups on the camps.”⁵¹ This was seen by residents as a threat or provocation. The soldiers were often drunk and harassed residents for vodka. It was reported that some left small explosives lying around where small children could play with them.⁵²

On 15th November, the Ingush, Chechen and Russian authorities created a joint “United Headquarters” to facilitate return to Chechnya.⁵³ Soon after, they were at work in the camps explaining the advantages of returning and the disadvantages of staying in Ingushetia. They were equipped with “voluntary return” forms, which they repeatedly pressurised residents to sign, promising five months of supplies on their return to Chechnya to those who did.⁵⁴ However, once signed, the forms took away any right to remain in the camps or to return to them, even if no alternative accommodation was found in Chechnya. The signatories would be unable to reregister as displaced people or be reinstated as such. They would be ineligible for any further government humanitarian assistance in Ingushetia.⁵⁵ In some cases, federal troops accompanied the United Headquarters representatives and began intimidating the camp residents to sign the forms.⁵⁶

On the 18th November, the Russian Health Ministry issued a statement that an inspection had found that the five camps, including Aki Yurt, had insufficient heating, aging tents and unsanitary conditions, and were overcrowded.⁵⁷ The Ministry ordered the swift closure of the camps as well as eight spontaneous settlements.⁵⁸ However, Aki Yurt camp was the only camp closed to schedule.

The closure of Aki Yurt Camp

The population of Aki-Yurt camp was estimated by UNHCR in November at 1,500⁵⁹ of whom 716 were registered with the authorities.⁶⁰ However, early that month those

⁴⁸ Global IDP Project, *supra* n42, p5

⁴⁹ Médecins sans Frontières, *supra* n27. pp21-22

⁵⁰ *ibid.* p22

⁵¹ UNHCR, *Ingushetia: Protection Concerns for Chechens* (UNHCR website, 1 November 2002) at <http://www.unhcr.ch/cgi-bin/texis/vtx/home/+xwwBmeutNb8wwwnwwwwwwwhFqnN0bItFqnDni5AFqnN0bIcFqgoDt15rnBowaelSmDNdVnMxnGa+XX+elk3qmAwwwwwwwDzmxwwwwww/opendoc.htm>, accessed 15/08/03

⁵² Norwegian Helsinki Committee, *supra* n20, p11.

⁵³ Human Rights Watch, *Into Harm's Way*, *supra* n18, p5

⁵⁴ *ibid.* p6

⁵⁵ *ibid.* p7

⁵⁶ *ibid.* p6

⁵⁷ Russian Health Ministry, Order 799, dated 18th November 2002. Quoted in Human Rights Watch, *ibid.* p5

⁵⁸ *ibid.*

⁵⁹ UNHCR, *Don't close Ingushetia's camps until proper alternatives are found, urges UNHCR*

registered discovered that they had all been removed from the list of displaced people eligible for humanitarian assistance in Ingushetia.⁶¹ The date for the closure of the camp was announced by the authorities as the 1st December.⁶² The Ingush migration authorities maintained that any return to Chechnya due to the closure would be voluntary. However, towards the end of November, as coercion of the displaced people to leave the camps was stepped up, UNHCR and other humanitarian officials were temporarily barred from entering the camp.⁶³

United Nations officials were completely banned from the camps on the 1st and 2nd of December, on the pretext that their visit would give the displaced people false hope.⁶⁴ At the same time, gas and electricity supplies were cut off.⁶⁵ As this was the middle of winter, living in uninsulated tents in subzero temperatures without heating was untenable.⁶⁶ Officials began to dismantle remaining tents on 1st December.⁶⁷ According to reports from camp residents, on 3rd December the final tent dwellers were forced out of their tents by soldiers, who proceeded to knock the tents down.⁶⁸

Local monitors reported to UNHCR that half of the camp dwellers remained in Ingushetia on the 3rd December.⁶⁹ Of these, some had found accommodation with host families or in temporary settlements. Twenty-one families remained in mud-brick houses they had built on the camp site.⁷⁰ Human Rights Watch found most of these families two weeks later, using the wooden floors of the abandoned tents as firewood, and being continually harassed by officials to leave.⁷¹ One resident reported that some officials had threatened to plant drugs or guns in his home and arrest him if he did not leave.⁷²

Developments since the closure of Aki-Yurt

The means by which Aki-Yurt camp was closed drew worldwide attention to the displaced population there, and led to substantial domestic and international criticism of the Russian authorities. Because of this, President Putin announced on 11th December that the resettlement process would be suspended until a specially

(UNHCR website, 29 November 2002) at http://www.unhcr.ch/cgi-bin/texis/vtx/home/+wwBmeyl_68wwwwwwwwwwhFqnN0bItFqnDni5AFqnN0bIcFqyoDt15mBowaelS4paNdVnMxnGa+XX+elk3qmAwwwwwwwDzmxwwwwww/opendoc.htm, accessed 15/08/03

⁶⁰ *ibid.*

⁶¹ Norwegian Helsinki Committee, *supra* n20, p12

⁶² Human Rights Watch, *Into Harm's Way*, *supra* n18, p5

⁶³ *ibid.* p11

⁶⁴ UNHCR, *Ingushetia camp closed; UNHCR concerned about former residents* (UNHCR website, 3 December 2002) at http://www.unhcr.ch/cgi-bin/texis/vtx/home/+gwwBmeL4d_8wwwwwwwwwwhFqnN0bItFqnDni5AFqnN0bIcFqgoDt15mB

[owaellmDynqnMxnGa+XX+eIX3qmxwwwwww/opendoc.htm](http://www.unhcr.ch/cgi-bin/texis/vtx/home/+gwwBmeL4d_8wwwwwwwwwwhFqnN0bItFqnDni5AFqnN0bIcFqgoDt15mBowaellmDynqnMxnGa+XX+eIX3qmxwwwwww/opendoc.htm), accessed 15/08/03

⁶⁵ Human Rights Watch, *Into Harm's Way*, *supra* n18, p11

⁶⁶ *ibid.* The quote is from a Human Rights interview with an interviewee requesting anonymity, Ingushetia, 17th December 2002.

⁶⁷ Médecins sans Frontières, *supra* n27, p23

⁶⁸ Human Rights Watch, *Into Harm's Way*, *supra* n18, p11

⁶⁹ UNHCR, *Ingushetia camp closed*, *supra* n64

⁷⁰ *ibid.*

⁷¹ Human Rights Watch, *Into Harm's Way*, *supra* n18, p11

⁷² *ibid.* pp11-12

constituted body had come up with ways to ensure the rights of the displaced.⁷³ After this the pressure on residents of the remaining tent camps temporarily lessened.⁷⁴

In January, officials halted their campaign threatening residents of camps into signing “voluntary” return forms, and stated that no camps would be forcibly closed in the winter.⁷⁵ However, other coercive measures, such as the arbitrary deregistration of displaced people continued. In the first three months of 2003, hundreds of deregistrations occurred, largely of those living in unofficial “spontaneous settlements”. This precluded access to government services and assistance. As most of the people deregistered could not afford private accommodation, they have been left with little option but to return to Chechnya.⁷⁶ However, some have been reregistered after paying substantial bribes.⁷⁷

A separate problem is the refusal of the authorities to allow humanitarian organisations to replace damaged or worn tents or to allow installation of new tents.⁷⁸ In response to concerns expressed by the authorities that the camps were not suitable for habitation, Médecins sans Frontières began to construct alternative single-room accommodation buildings for families in the tent camps.⁷⁹ President Zyazikov gave verbal agreement for this construction in January 2003.⁸⁰ However, on the 28th January, a new directive was passed by the Ingush government whereby all construction had to satisfy new regulations. The MSF shelters were deemed illegal by the authorities. Plans to build a further 1,200 shelters have been stalled.⁸¹

A worrying development has been the arrest, detention and forced transfer to Chechnya of local human rights activists in the camps.⁸² This included the regional head of the Russian-Chechen friendship society, as well as the head and an activist of an organisation that tried to conduct a meeting to discuss the March referendum on Chechnya’s status.⁸³ In both cases the detainees were later released after domestic and international pressure. However, a man detained by Ingush police at Satsita camp on 6th January was later returned dead, while his brother was disappeared in the same operation.⁸⁴ Other seemingly arbitrary detentions have been taken as warnings that Ingushetia is no longer safe for displaced people from Chechnya.⁸⁵

Particularly at the time of the Aki-Yurt closure, the authorities felt compelled under the media spotlight to explain the obvious desire of many camp residents not to return at this stage. A Federal minister suggested that Maskhadov’s supporters were spreading propaganda in the camps to persuade people to stay.⁸⁶ However, a Chechen

⁷³ Médecins sans Frontières, *supra* n27, pp23-24

⁷⁴ *ibid.* p24

⁷⁵ Human Rights Watch, *Briefing Paper on the Human Rights Situation in Chechnya* (New York: Human Rights Watch, 2003), p8

⁷⁶ *ibid.*

⁷⁷ *ibid.*, p9

⁷⁸ Médecins sans Frontières, *supra* n27, pp22-23

⁷⁹ *ibid.*, p4

⁸⁰ *ibid.*, p24

⁸¹ *ibid.*, p5

⁸² *ibid.*

⁸³ *ibid.*

⁸⁴ *ibid.*; Human Rights Watch, *Briefing Paper*, *supra* n75, p9

⁸⁵ Human Rights Watch, *ibid.*

⁸⁶ Vladimir Zorin, quoted in Interfax-AVN, *Vladimir Zorin: Refugees Returning to Chechnya*

The situation in Chechnya

While concentrating on the circumstances of displaced people in Ingushetia, it is important to consider the current state of affairs in Chechnya, in order to assess the legality of actions taken to force, compel or promote return. As indicated above, by April 2000, Federal troops had established nominal control over most of Chechnya, with Maskhadov's forces regrouping in the mountains in the south of the Republic. During the "hot" phase before April 2000 at least three incidents of mass killing of non-combatants by Federal troops, and widespread looting and destruction of villages were reported.⁹⁷

The economy of Chechnya remains devastated. According to the European Parliament, "living conditions in Chechnya and in particular in Grozny are disastrous, the water supply, sewage system and electricity grid are severely damaged, the employment situation is apparently shattered and security standards are obviously very low."⁹⁸

Federal troops have remained in Chechnya to continue with "anti-terrorist operations". There continue to be reports of sweep operations encompassing numerous human rights violations; as well as arbitrary killings and detentions, disappearances, torture and rape.⁹⁹ Scores of disappearances in night raids on private houses by unidentified armed men, presumed to be Russian soldiers, have been documented in 2003.¹⁰⁰ Soldiers manning the numerous checkpoints throughout the Republic regularly harass passing citizens, demanding bribes and sometimes making detentions.¹⁰¹ The Federal authorities has also set up a largely Chechen administration for the republic, with internal security services that are also feared by the general population.¹⁰²

Separatist forces have also committed atrocities. There has been a marked radicalisation among them over the course of the latest conflict, with a younger generation more willing to resort to suicide bombings.¹⁰³ Many appear to consider any civilians working with the Russian-backed administration as legitimate military targets, in clear contravention of the laws of armed conflict.¹⁰⁴ Terrorist bombings

⁹⁷ see, e.g. Bindig, *The Human Rights Situation in the Chechen Republic* (Parliamentary Assembly of the Council of Europe, Document 9732 at Council of Europe website); ¶¶13-22

⁹⁸ European Parliament, *Provisional Resolution on Chechnya*. Document P5_TA-PROV(2003)0335 of 3 July 2003. (ReliefWeb website) at

<http://www.reliefweb.int/w/rwb.nsf/0/c6575fc5de0b402849256d5c0006985e?OpenDocument>, accessed 30/08/03. Preambular paragraph e

⁹⁹ Bindig, *supra* n97, ¶¶23-45

¹⁰⁰ Human Rights Watch, *Briefing Paper, supra* n75, p5

¹⁰¹ Bindig, *supra* n97., ¶45

¹⁰² Council of Europe, *Twenty-eighth interim report by the Secretary General on the presence of the Council of Europe's experts in the Office of the Special Representative of the President of the Russian Federation for ensuring Human Rights and Civil Rights and Freedoms in the Chechen Republic – period from 14 May to 20 June 2003*. Council of Europe Document SG/Inf(2003)24, at [http://www.coe.int/T/E/Secretary_general/Documents/Information_documents/2003/SGINF\(2003\)24E.asp#TopOfPage](http://www.coe.int/T/E/Secretary_general/Documents/Information_documents/2003/SGINF(2003)24E.asp#TopOfPage), accessed 30/08/03, ¶13

¹⁰³ Bransten, *Chechnya: Babitskii Says Rebels Better Armed, Leaning Toward Fundamentalism*. (RFE/RL website, 14 August 2003), at <http://www.rferl.org/nca/features/2003/08/14082003155502.asp>, accessed 10/08/03

¹⁰⁴ Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949. 75 UNTS 287, Article 3

aimed at administration buildings and figures have led to high casualty levels, and a number of local administrators have been assassinated or kidnapped by rebels.¹⁰⁵ There are reports of extrajudicial executions of captured Russian soldiers by separatist fighters.¹⁰⁶ Guerrilla activities have intensified in the zones officially under the control of the Russian Federation forces.¹⁰⁷

Meanwhile, government military operations in areas in the Southern mountains where rebels are suspected to be in hiding regularly lead to new displacement of populations, both within Chechnya as well as to Ingushetia.¹⁰⁸ In addition there are high levels of general lawlessness in Chechnya, with “unknown persons in camouflage uniform,” who may be Federal soldiers, internal security services, militant separatists or common criminals, committing crimes largely with *de facto* impunity.¹⁰⁹ There has also been a marked increase in kidnapping of aid workers.¹¹⁰ Furthermore, at 5,695 injuries or deaths, Chechnya is reported to have a higher casualty rate from mines and unexploded ordinance than any state in the world.¹¹¹

In addition to these multiple security concerns, displaced people are also reluctant to return to Chechnya because of housing problems. As previously indicated, there has been extensive property damage and destruction in the Republic, primarily during the Russian re-conquest. The authorities have sought to deal with these problems by establishing Temporary Accommodation Centres for displaced people in Chechnya. However, as indicated above, the Centres have neither enough capacity nor adequate facilities. UNHCR reported in early 2003 that the situation in the Centres “remains precarious: sanitation is below acceptable standards with latrines located outside buildings in insufficient numbers and non-accessible after curfew.”¹¹² The result has been that several hundred returnees from Ingushetia have been “unable to remain in Chechnya, primarily for reasons of security and harassment, as well as for lack of shelter and infrastructure,” and have returned to Ingushetia.”¹¹³

The situation elsewhere in the Russian Federation

The relationship between Russians and Chechens has often been difficult since the conquest of the North Caucasus in the 18th century under successive Tsarist, Soviet and Russian Federal governments. The brutal crackdown after a major uprising in the 19th century, and the deportations under Stalin in 1944 are still deeply felt among the Chechens. However, since the 1940s certain Chechens have risen to prominence at the Union and later Federal level. The three presidents of *de facto* independent Chechnya in the 1990s, earlier all had senior positions in the Soviet armed forces. Another Chechen, Ruslan Khasbulatov, was the highly influential speaker of the

¹⁰⁵ Bindig, *supra* n97, ¶¶48-50. It is also reported that one local administrative chief was murdered by Russian soldiers, after speaking out against human rights violations (Binding, ¶32).

¹⁰⁶ Amnesty International, *Chechnya: Human Rights under Attack* (2002), at <http://www.amnesty.org/russia/chechnya.html>, accessed 30/08/03

¹⁰⁷ UNHCR, *Paper on Asylum Seekers from the Russian Federation in the context of the situation in Chechnya* (Geneva: UNHCR, 2003), p6

¹⁰⁸ *ibid.*

¹⁰⁹ Bindig, *supra* n97, ¶47

¹¹⁰ UNHCR, *Paper* (2003), *supra* n107, p9

¹¹¹ International Campaign to Ban Landmines, *Landmine Monitor 2003* at <http://www.icbl.org/lm/2003/intro/survivor.html>, accessed 10/09/03

¹¹² UNHCR, *Paper* (2003), *supra* n107, p7

¹¹³ *ibid.*, p9

Federal parliament in the early 1990s; while a number of other Chechens have entered and remain part of the Russian business elite. However, these successes remain exceptions.

The Moscow Helsinki Group provides a useful overview of discrimination against Chechens in Russia proper.¹¹⁴ Mass migration of Chechens and others from the poverty stricken Caucasus region in the 1980s and 1990s to Moscow and the Russian heartlands led to resentment among Russians.¹¹⁵ “Slavic” criminal gangs actively fostered a climate of hatred for their Chechen competitors and Caucasians more generally.¹¹⁶ Regional governments and law enforcement agencies began to take unlawful measures to reduce and reverse migration from the Caucasus.¹¹⁷

The situation of Chechens in Russia proper has worsened since the beginning of the the 1994-1996 conflict. The sympathy felt by much of the Russian population for the suffering of the population of Chechnya has gradually turned to increased resentment of Chechens as Russian casualties in the wars and in terrorist acts attributed to Chechens continue to mount. At the local and federal level, politicians have actively encouraged these negative feelings, while taking legislative and administrative measures that restrict the rights of Chechens. Such measures will be discussed in the next chapter.

¹¹⁴ Moscow Helsinki Group, *Nationalism, Xenophobia and Intolerance in Contemporary Russia* (Moscow: Moscow Helsinki Group, 2002), pp293-330

¹¹⁵ *ibid.* p295

¹¹⁶ *ibid.* p296

¹¹⁷ *ibid.*

Chapter 2 – Russian legislation

This chapter will consider the domestic legal and administrative order in the Russian Federation as it affects displaced Chechens. Issues regarding residence restrictions, legal provision for internally displaced people and constitutional human rights provisions will be discussed. This will be followed by a summary of relevant treaty obligations of the Russian Federation.

Residence restrictions

The options open to displaced people from Chechnya to seek shelter elsewhere in the Russian Federation are limited by local regulations and administrative requirements based on the Soviet era ‘propiska regime.’¹¹⁸ This regime gave police authorities the power to authorise or deny permission to citizens to sojourn or reside permanently in a given location.¹¹⁹ A Federal law passed in 1993 to abolish propiska was designed to remove the requirement of *authorisation* for temporary or permanent residence and replace it with a system of *notification* of local Interior Ministry officials.¹²⁰ This change reflects Article 27 of the Russian Constitution, which guarantees freedom of movement and residence.¹²¹ However, since 1994 local governments in Moscow and Moscow region, St. Petersburg, Krasnodar and Stavropol territories, Vladimir, Nizhny Novgorod, Rostov and other areas, have passed local decrees and regulations introducing or reinforcing strict rules which require prior official permission for residence, thus emulating the former system.¹²² These regulations are put in place to protect local labour markets, control internal migration and prevent the settlement of economically or politically “undesirable” migrants, including Chechens.¹²³ Violators of the regulations have suffered fines, illegal beatings or even eviction from their homes.¹²⁴ Such regulations and practices have been censured by the Russian Federal Ombudsman as “violations of constitutional rights.”¹²⁵ On a number of occasions, the Federal Constitutional Court has also declared various propiska-style regulations and restrictions unconstitutional.¹²⁶ However, despite these decisions, the local regulations remain in effect.¹²⁷ The government at federal and local level has failed to inform law enforcement officials that the system has been abolished or that federal laws and the Constitution override local regulations.¹²⁸

¹¹⁸ UNHCR, *Paper* (2002), *supra* n7, p8

¹¹⁹ *ibid.* p9

¹²⁰ *ibid.* p8. The law is entitled “The Law of the Russian Federation on Freedom of Movement, Choice of Place of Sojourn and Residence within the Territory of the Russian Federation”. Federal Law No. 5242/1 of 25 June 1993

¹²¹ Constitution of Russian Federation, adopted 12 December 1993, came into force 25 December 1993. Text available at Russian Constitution website, <http://www.constitution.ru/en/10003000-03.htm>, accessed 15/8/03

¹²² Amnesty International, *Torture in Russia: "This man-made Hell"* (London: Amnesty, 1997), pp8-9

¹²³ UNHCR, *Paper* (2002), *supra* n7, p9

¹²⁴ Council of Europe, *Honouring of obligations and commitments by the Russian Federation* (Document 8127 of 2 June 1998), at

<http://assembly.coe.int/Documents/WorkingDocs/doc98/Footnote19#Footnote19>, accessed 3/09/03

¹²⁵ Russian Federation Ombudsman, *Special Report on the Constitutional Right to Liberty of Movement and Freedom to Choose Place of Sojourn and Residence in the Russian Federation* (2000), quoted in UNHCR, *Paper* (2002), *supra* n7, p9

¹²⁶ Cléaïs, *The propiska system applied to migrants, asylum seekers and refugees in Council of Europe member states: effects and remedies* (Council of Europe Website, 2001), at <http://assembly.coe.int/Documents/WorkingDocs/doc01/EDOC9262.htm>, accessed 19/08/03, ¶¶16-23

¹²⁷ UNHCR, *Paper* (2002), *supra* n7, p9

¹²⁸ Amnesty International, *Torture in Russia*, *supra* n122

The propiska-like restrictions have had a disproportionate impact on Chechens and other minority ethnic groups. During the 1994-1996 conflict, the lack of such documentation was used in combination with the provisions of a presidential decree on fighting organized crime by police officials as a pretext to detain Chechens and others for up to 30 days without charge and without access to a lawyer, thus creating one of the preconditions for torture.¹²⁹ In September 1999, all those without residence permits in Moscow were obliged to re-register, under the terms of a City Government resolution drawn up specifically in response to the apartment block bombings.¹³⁰ Almost all Chechens without the permits were given written orders to leave the city, while almost all such Russians were allowed to stay.¹³¹ It continues to be more difficult for Chechens to receive permits. Often local regulations require the cancellation of previous residence registration in Chechnya, though the displaced people fear for their lives if they return.¹³² Those denied registration are effectively excluded from the enjoyment of a range of civil, political, social and economic rights. Companies that take on workers without residence permits are liable to large fines.¹³³ School attendance and the receipt of medical insurance, pensions, marriage certificates, passports and driving licenses are impossible in Moscow and much of Russia without residence permits.¹³⁴ Those without registration are also much more likely than the general public to be targeted by the authorities for harassment, blackmail and worse.¹³⁵ Large-scale police check-ups of registration papers have been accompanied by arbitrary detention, the beating of detainees, forced entry into homes, and the seizure of personal documents.¹³⁶

Forced Migrant Status

The term “internally displaced person” does not exist in the Russian domestic legal system.¹³⁷ The nearest equivalent is the status of “forced migrant”, which includes some internally displaced people as well as Russians repatriating from other former Soviet republics.¹³⁸ The status is primarily meant to facilitate the integration of such people in their new place of residence and in principle guarantees them rights of residence.¹³⁹ An internally displaced forced migrant is defined in the Russian Law “On Forced Migrants” as:

¹²⁹ *Ibid.* The decree was entitled *Urgent measures to defend the population from banditry and other manifestations of organized crime* (Presidential Decree No. 1226 of 14 June 1994) and was repealed in 1997.

¹³⁰ UNHCR, *Paper (2002)*, *supra* n7, p14

¹³¹ Memorial, *NGO Report to the UN Committee on Elimination of Racial Discrimination on the Compliance of the Russian Federation with CERD* (December 2002), at www.memo.ru/eng/hr/dscr0212e/, accessed 15/08/03 ¶40

¹³² Moscow Helsinki Group, *Nationalism*, *supra* n114, pp305-306

¹³³ *ibid.* p318

¹³⁴ European Commission on Racism and Intolerance (ECRI), *Second Report on the Russian Federation* (2001). Document CRI (2001) 41, ¶78

¹³⁵ Amnesty International, “*Dokumenty!*”: *Discrimination on the Grounds of Race in the Russian Federation* (London: Amnesty, 2003), p28

¹³⁶ Moscow Helsinki Group, *Nationalism*, *supra* n132, p298.

¹³⁷ UNHCR, *Paper (2002)*, *supra* n7, p6

¹³⁸ UNHCR, *supra* n6 pp198-199

¹³⁹ Global IDP Project, *An Official Category for IDPs and Involuntary Migrants from the Former Soviet Union: the Status of “Forced Migrant”* (Global IDP Project website, date unknown), at <http://www.db.idpproject.org/Sites/idpSurvey.nsf/WebIDPLevel2?ReadForm&Country=Russian+Federation&s=National+and+International+Responses>, accessed 15/08/03

...a citizen of the Russian Federation who was forced to leave his/her place of permanent residence due to violence committed against him/her or members of his/her family or persecution in other forms, or due to a real danger of being subject to persecution for reasons of race, nationality, religion, language or membership of some particular social group or political opinion following hostile campaigns with regard to individual persons or groups of persons, [and/or]¹⁴⁰ mass violations of public order¹⁴¹

This clause, along with the analogous clause of the Federal Law “On Refugees” adopted and amended at the same times, is derived with modifications from Article 1.A(2) of the 1951 United Nations Refugee Convention.¹⁴² Under Article 2 of the Law “On Forced Migrants”, only those internally displaced people that have been forced to move to another subject of the Russian Federation are eligible for the status.¹⁴³ This precludes those people displaced within Chechnya itself.¹⁴⁴ The law “On Forced Migrants” provides for the right to choose independently a place of residence in the Russian Federation,¹⁴⁵ and forbids forced return to the area left for reasons provided for in article 1.¹⁴⁶ It also provides for the right of specific allowances and loans to facilitate integration, regardless of the condition of property in the place of original residence.¹⁴⁷ The status is initially granted for five years and subsequently can be extended annually if the individual remains in need of assistance.¹⁴⁸ At present, there is no other mechanism to apply to the government for aid in the case of loss of place of residence or property.¹⁴⁹ Without forced migrant status, displaced people also have legal problems in securing employment, housing and education, and accessing medical services; and cannot receive pensions, child support and registration documents.¹⁵⁰ Furthermore, forced migrant status is essential for people displaced from Chechnya to secure government support in finding temporary accommodation outside the Republic and the tent camps in Ingushetia, and to register as unemployed.¹⁵¹ Those displaced people without forced migrant status or other legal status in many areas of the Russian Federation, including Moscow and St. Petersburg are also exposed to increased harassment from police and local authorities.¹⁵²

However, the criteria for Forced Migrant status are narrower in certain respects than those for Internally Displaced Person status as laid out in Deng’s Guiding

¹⁴⁰ The Russian original has no conjunction here, leaving the text ambiguous as to whether the criteria are alternatives or cumulative.

¹⁴¹ Russian Federal Law “On Forced Migrants” of 1993, as amended on 28 December 1995, at Article 1. In UNHCR, *Paper (2002)*, *supra* n7, pp6-7

¹⁴² Convention relating to the Status of Refugees, 189 U.N.T.S. 150, entered into force April 22, 1954. See Memorial, *Shadow NGO report on CERD*, *supra* n131, ¶ 74

¹⁴³ UNHCR, *State*, *supra* n6, pp199

¹⁴⁴ UNHCR, *Paper (2002)*, *supra* n7, p7

¹⁴⁵ Article 6

¹⁴⁶ Article 8

¹⁴⁷ Article 4. See UNHCR, *Paper (2002)*, *supra* n7, p8

¹⁴⁸ Global IDP Project, *Internally Displaced People: a Global Survey* (2nd Edition. London: Earthscan, 2002), p164

¹⁴⁹ Memorial, *Shadow NGO report on CERD*, *supra* n131, ¶74

¹⁵⁰ Norwegian Helsinki Committee, *supra* n20, p6

¹⁵¹ Memorial, *Shadow NGO report on CERD*, *supra* n131, ¶74.

¹⁵² Global IDP Project, *Chechens Pressed*, *supra* n42, p3

Principles.¹⁵³ Persons applying for forced migrant status have to provide evidence that they have been discriminated against on one of the grounds listed in article 1.¹⁵⁴ The term “persecution” is subjective, and can be of different thresholds for different ethnic groups.¹⁵⁵ Sometimes applicants are orally refused permission to write applications, and some regions require the fulfilment of additional conditions to grant the status.¹⁵⁶ Furthermore, the ambiguity regarding whether “mass disorders” are an alternative legal ground on which to apply for Forced Migrant Status or merely an additional, cumulative component of persecution has had serious implications for those fleeing the conflict in Chechnya.¹⁵⁷

Three months after the beginning of the 1994-1996 armed conflict, the authorities decreed that the conflict, as “a mass violation of public order,” was a sufficient reason to grant Forced Migrant Status. Hence, 162,000 mostly non-Chechen people displaced from Chechnya were granted the status in about 80 subject regions of the Russian Federation.¹⁵⁸ A number of Chechen officials from the pro-Moscow regime of 1994-1996 were provided employment elsewhere in the Russian Federation, but even they had great problems securing residence permits in their new regions.¹⁵⁹ However, those leaving Chechnya between the two campaigns and after 1999 have been required to provide documentary proof of persecution as “mass violation of public order” is no longer a sufficient ground to claim Forced Migrant Status.¹⁶⁰ Between October 1999 and December 2002, despite the hundreds of thousands of people newly displaced, only 13,232 people from Chechnya were granted the status throughout the Russian Federation.¹⁶¹ In Ingushetia, the number of people granted the status was just 89.¹⁶² These numbers include those from the 1994-1996 conflict who had experienced procedural delays.¹⁶³ UNHCR reported that most applications for Forced Migrant Status based on accusations of ill-treatment by federal troops or loss of property in the conflict that began in 1999, as well as “mass violations of public order” have been rejected by the various regional migration authorities. This has been justified by maintaining that the on-going “anti-terrorist campaign” of the Russian government cannot be construed as a “mass violation of public order” and the federal forces taking part cannot be considered to be committing such violations.¹⁶⁴ The displaced people who were granted the status reported fear of persecution by Islamic fundamentalist groups.¹⁶⁵

¹⁵³ ‘For the purposes of these Principles, internally displaced persons are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalised violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognised State border.’ Annex to Report of the Representative of the Secretary - General, Mr. Francis M. Deng, submitted pursuant to Commission resolution 1997/39, UN Doc. E/CN.4/1998/53/Add.2, 11 February 1998

¹⁵⁴ Gannushkina (2002), *supra* n31

¹⁵⁵ Memorial, *Shadow NGO report on CERD*, *supra* n131, ¶75

¹⁵⁶ *ibid.*

¹⁵⁷ *ibid.*

¹⁵⁸ UNHCR, *Paper* (2002), *supra* n7, p7

¹⁵⁹ Moscow Helsinki Group, *Nationalism*, *supra* n132, p297

¹⁶⁰ Memorial, *Shadow NGO report on CERD*, *supra* n131, ¶76

¹⁶¹ UNHCR, *Paper* (2003), *supra* n107, p9

¹⁶² Gannushkina (2002), *supra* n31

¹⁶³ UNHCR, *Paper* (2002), *supra* n7, p7

¹⁶⁴ *ibid.*

¹⁶⁵ *ibid.*

A further problem for those applying for forced migrant status in Moscow is a decree of the Mayor of the city of 28 September 1999.¹⁶⁶ In clear contravention of the law “On Forced Migrants” this decree stated that applicants must already be in possession of registration permits for the city. Given the difficulties outlined above in the acquisition of residence permission, in particular for ethnic Chechens, this has precluded the acquisition of forced migrant status for many displaced people in the city.

Of those individuals who have received Forced Migrant Status since October 1999, the vast majority have been ethnic Russians, as the Federal Migration Service argues that by default Russians are persecuted on ethnic grounds in Chechnya.¹⁶⁷ The Government of Ingushetia has consistently declared that they are willing locally to integrate ethnic Ingush displaced people from Chechnya.¹⁶⁸ By contrast, ethnic Chechens as a rule are not deemed eligible for Forced Migrant Status throughout the Federation, as they are said not to fulfil the criteria of Article 1 of the law.¹⁶⁹ This was officially recognised in a letter from the Ministry of Federation, Migration and Nationalities Policy.¹⁷⁰ A number of migration service officials have directly admitted that they were instructed not to give the status to ethnic Chechens since “they were not victims of ethnic, confessional or political discrimination.”¹⁷¹ Those who claimed massive destruction of civil infrastructure and private property as well as persistent general insecurity as grounds for being granted forced migrant status were unsuccessful.¹⁷² The few exceptions in certain regions are those ethnic Chechens of ethnically mixed families, those who can supply documentary proof of loyalty to the Russian authorities and direct co-operation with the pro-Russian Chechen administration during the 1994-1996 conflict, and a small number of those who claimed on the basis of persecution by Muslim fundamentalists, bandits or separatist militants.¹⁷³ As a rule, these few positive decisions were only made after lengthy and stressful court appeals, during which the applicants have to tolerate verbal abuse on the ground of their ethnicity from the migration authorities and sometimes even the judges.¹⁷⁴

The government assistance received by some of the displaced people in the tent camps in Ingushetia is not based on forced migrant status but on Form 7, a registration form that is used by the migration authorities for the planning and provision of humanitarian assistance, and the compilation of statistics.¹⁷⁵ It is not an identity document, and further documentation is required for residence registration.¹⁷⁶ In December 1999, the Federal authorities ordered the suspension of registration under

¹⁶⁶ *ibid.*, p15

¹⁶⁷ Memorial, *Shadow NGO report on CERD*, *supra* n131, ¶76

¹⁶⁸ UNHCR, *Paper* (2002), *supra* n7, p21

¹⁶⁹ Gannushkina (2002), *supra* n31

¹⁷⁰ *NGO Report to the UN Committee*, *supra* n142, ¶76

¹⁷¹ Gannushkina (2002), *supra* n31

¹⁷² UNHCR, *Paper* (2003), *supra* n107, pp10-11

¹⁷³ Gannushkina (2002), *supra* n31

¹⁷⁴ *ibid.*

¹⁷⁵ UNHCR, *Paper* (2002), *supra* n7, p20. The form is entitled “Registration of a family arriving under emergency situations” and is provided for under Letter of Instruction 19 of the Federal Migration Service, of 31 March 1997.

¹⁷⁶ *ibid.* p11, fn12

Form 7 by the Ingush authorities of newly displaced people from Chechnya. This ordered was largely ignored until April 2001.¹⁷⁷ However, since then it has been very difficult to register or re-register for aid in Ingushetia. This has become an additional factor compelling return to Chechnya.

Constitutional rights

In addition to freedom of movement there are a range of other provisions of the Russian Constitution that are relevant to the plight of the people displaced from Chechnya. These include non-discrimination and equality before the law (article 19); the protection of human dignity and prevention of torture and other severe and humiliating forms of treatment and punishment (article 21); the right to housing (article 40 – see below); the guarantee of judicial protection and right of appeal (article 46); and the right to compensation from the state for unlawful damages inflicted by state officials (article 53). These rights may be “limited by the federal law only to such an extent to which it is necessary for the protection of the fundamental principles of the constitutional system, morality, health, the rights and lawful interests of other people, for ensuring defence of the country and security of the State” (article 55(3)).¹⁷⁸

Furthermore, Article 15(4) of the Constitution clearly states that international law and international treaties and agreements supersede domestic law in the Russian Federation.¹⁷⁹ Therefore, the treaty obligations of the Russian Federation must be taken into account when considering the situation of the displaced people from Chechnya in Ingushetia.

Treaty obligations of the Russian Federation

There is no legally binding international instrument specifically designed to protect internally displaced people. The Guiding Principles on Internal Displacement,¹⁸⁰ drawn up by Francis Deng and a team of experts after the UN Commission of Human Rights had become seized of the issue, specifically state that they should not be interpreted as modifying international or domestic instruments or rights.¹⁸¹ Neither are internally displaced people protected by international refugee law, as they are not outside their country of nationality or habitual residence.¹⁸² However, they are protected by obligations under international human rights law and international humanitarian law.

The Russian government announced in 1992 that it would continue to respect obligations from international treaties concluded by the USSR.¹⁸³ Humanitarian law instruments thus applicable include the Fourth Geneva Convention and its Second Protocol.¹⁸⁴ Human rights law instruments include the ICCPR (with acceptance of

¹⁷⁷ *ibid.* pp11-12

¹⁷⁸ Russian Constitution, *supra* n121

¹⁷⁹ *ibid.*

¹⁸⁰ *supra* n153

¹⁸¹ Principle 2, ¶2. See Lavoyer, *Guiding Principles on Internal Displacement* 324 IRRC 467-480

¹⁸² Refugee Convention, *supra* n142, Article 1.A(2); as modified by Protocol relating to the Status of Refugees, 606 U.N.T.S. 267, entered into force Oct. 4, 1967.

¹⁸³ Malanczuk, *Akehurst's Modern Introduction to International Law* (7th Edition, London: Routledge, 1997), p166

¹⁸⁴ Geneva Convention (IV), *supra* n104

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of

inter-State complaints) and its first Optional Protocol,¹⁸⁵ the ICESCR,¹⁸⁶ CERD (with acceptance of individual complaints)¹⁸⁷ and the Torture Convention (with acceptance of inter-State complaints and individual communications).¹⁸⁸ The Russian Federation has also ratified the ECHR and its fourth protocol, which includes the right to freedom of movement; and the Framework Convention for the Protection of National Minorities. It has signed, but not yet ratified the twelfth Protocol to the ECHR, which protects individuals from violations of all rights, including those in national law and other Council of Europe standards, rather than just those contained within the ECHR itself.¹⁸⁹ In addition, the Russian Federation has ratified the ILO Discrimination (Employment and Occupation) Convention.¹⁹⁰ It is not a State Party to the Rome Statute of the International Criminal Court.¹⁹¹

The Russian Federation has no reservations to Geneva Protocol II, or the parts of the Geneva Conventions that cover internal armed conflict.¹⁹² However, the threshold of applicability for Protocol II is very high, governing only non-international armed conflicts...

Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977. 1125 UNTS 609

See ICRC, *International Humanitarian Law: States Parties and Signatories*, at <http://www.icrc.org/ihl.nsf/WebPAYS?OpenView&Start=148&Count=150&Expand=180.1#180.1>, accessed 20/08/03. The USSR ratified the Geneva Conventions on 10 May 1954, and the Additional Protocols on 29 September 1989.

¹⁸⁵ International Covenant on Civil and Political Rights (ICCPR), 999 UNTS 171.

Optional Protocol to the International Covenant on Civil and Political Rights, 999 U.N.T.S. 302.

See OHCHR, *Status of Ratifications of the Principal International Human Rights Treaties*, accessed from http://www.unhcr.ch/html/menu3/b/a_ccpr.htm, 21/03/03. The USSR ratified the ICCPR on 16 October 1973 and its First Optional Protocol on 1 October 1991.

¹⁸⁶ International Covenant on Economic, Social and Cultural Rights, 993 UNTS 3.

See OHCHR, *ibid.* The USSR ratified the ICCPR on 3 January 1976.

¹⁸⁷ International Convention on the Elimination of All Forms of Racial Discrimination, 660 U.N.T.S. 195.

See OHCHR, *ibid.* The USSR ratified CERD on 6 March 1969.

¹⁸⁸ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 39 UNGAOR Supp. (No. 51) 197

See OHCHR, *ibid.* The USSR ratified the Torture Convention on 3 March 1987.

¹⁸⁹ Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), adopted Rome 4 November 1950, ETS No. 005

Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and in the first Protocol thereto, 16 September 1963, ETS No. 046

Framework Convention for the Protection of National Minorities, adopted Strasbourg. 1 February 1995, ETS No. 157

Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 2000, ETS No. 177

See Council of Europe, *Chart of Signatures and Ratifications of a Treaty*, at <http://conventions.coe.int/Treaty/EN/CadreListeTraites.htm>, accessed 8/09/03. The Russian Federation ratified both the ECHR and its 4th Protocol on 5 May 1998 and the Framework Convention on 24 August 1998.

¹⁹⁰ ILO Convention 111. 362 U.N.T.S. 31, 25 June, 1958. The Soviet Union ratified the Convention on 4 May 1961. <http://www.ilo.org/ilolex/english/convdisp1.htm>, accessed 8/09/03

¹⁹¹ Rome Statute of the International Criminal Court (ICC), adopted 17 July 1998. Extract reprinted in Roberts and Guelff, *Documents on the Laws of War* (3rd edition, Oxford: OUP, 2000), pp671-695

See International Criminal Court, *States Parties*, <http://www.icc-cpi.int/php/statesparties/allregions.php> accessed 21/08/03.

¹⁹² See *supra* n184

*... in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol.*¹⁹³

Article 1 (2) specifically excludes from the scope of the Protocol:

... situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts.

Whereas in the 1994-1996 conflict, the Federal Constitutional Court specifically ruled that the Protocol was applicable,¹⁹⁴ the Russian authorities have consistently referred to the conflict that began in 1999 as a ‘Counter-Terrorism Operation,’¹⁹⁵ implying that it falls below the threshold for Protocol II and even the lower threshold for Common Article 3 of the Geneva Conventions. Human Rights Watch’s recent report on the situation states that at the present time the applicability of Protocol II is debatable because of the limited control that separatists exercise over territory in Chechnya.¹⁹⁶ However, a recent report by Amnesty International implies that Protocol II is applicable,¹⁹⁷ and the UN’s Committee against Torture supports this view,¹⁹⁸ as does the resolution passed on Chechnya by the UN Commission on Human Rights in 2001.¹⁹⁹ In March 2003, the BBC stated that Maskhadov’s fighters ‘still claim control over large parts of Chechnya, at least by night,’²⁰⁰ but it would be difficult to make a categorical statement on the current applicability of Protocol II. It would seem less disputable, however, to classify the conflict in late 1999 and early 2000 as non-international armed conflict as defined in Protocol II., as Russian forces advanced through Chechnya facing sustained resistance from Maskhadov’s forces which continued to control large but diminishing areas of the Republic.

With regards to international human rights law, the Russian Federation has no reservations to the ICCPR, the ICESCR, CERD and the Torture Convention, and has not derogated from these treaties with respect to the situation in Chechnya.²⁰¹ With

¹⁹³ Protocol II, *supra* 184, Article 1

¹⁹⁴ ICRC, *National Case Law: Constitutional Court of the Russian Federation, 31 July 1995* (ICRC website), at <http://www.icrc.org/ihl-nat.nsf/0/ac8db8b32b8a2a5d432564dc0048bda4?OpenDocument>, accessed 21/08/03

¹⁹⁵ See, for example, Putin, *State of the Nation Address*, 18 April 2002, at http://www.infocentre.ru/eng_user/index.cfm?page=4&date=2003-03-22&startrow=1&msg_id=44182, accessed 21/08/03

¹⁹⁶ Human Rights Watch, *Into Harm’s Way*, *supra* n18, p12, fn 45

¹⁹⁷ Amnesty International, *The Russian Federation: Denial of Justice* (London: Amnesty, 2002), p53

¹⁹⁸ UN Document CAT/C/CR/28/4 – Committee Against Torture, *Conclusions and recommendations: Russian Federation* (2002)

¹⁹⁹ Commission on Human Rights, *Situation in the Republic of Chechnya of the Russian Federation* (Resolution 2001/24, adopted 20 April 2001)

²⁰⁰ Gorshkov, *Chechnya Faces Fraught Vote* (BBC News Website, 2003) at <http://news.bbc.co.uk/2/hi/europe/2877163.stm>, accessed 21/08/03

²⁰¹ United Nations Treaty Collection, *Declarations and Reservations*, at http://www.unhcr.ch/html/menu3/b/treaty5_esp.htm (ICCPR), http://www.unhcr.ch/html/menu3/b/treaty4_esp.htm (ICESCR), http://www.unhcr.ch/html/menu3/b/treaty2_esp.htm (CERD), and

regard to the First Optional Protocol to the ICCPR, it has stated that it will not permit the HRC to consider complaints if domestic remedies have not been exhausted or if other international procedures are considering the case.²⁰² Finally, the Russian Federation has made a reservation to articles 5(3) and 5(4) of the ECHR, which deal with bringing cases to court promptly, but no further reservations and no derogations.²⁰³

There are thus a number of significant international human rights and other instruments that the Russian Federation is bound to adhere to. The next chapter will consider the ways in which the treatment of displaced Chechens violates Russia's obligations under international law.

http://www.unhcr.ch/html/menu3/b/treaty12_asp.htm (Torture Convention), accessed 21/08/03

²⁰² United Nations Treaty Collection, *Declarations and Reservations*, at http://www.unhcr.ch/html/menu3/b/treaty6_asp.htm, accessed 21/08/03

²⁰³ Council of Europe, *List of declarations made with respect to treaty no. 005*, at <http://conventions.coe.int/treaty/en/DeclareList.asp?NT=005&CM=&DF=>, accessed 21/08/03

Chapter 3 – International law and the situation of displaced Chechens

Possible violations of the human rights of people displaced from Chechnya have been raised in a number of international human rights bodies. References to the situation in Ingushetia appeared in lists of issues to be taken up with the Russian Federation in advance of periodic reports by both the Human Rights Committee²⁰⁴ and the Committee on Economic, Social and Cultural Rights.²⁰⁵ These two Committees were scheduled to consider the Russian Federation's reports in 2003.²⁰⁶ In its Concluding Observations on the Russian Federation's amalgamated fifteenth to seventeenth Periodic Reports, the Committee on the Elimination of Racial Discrimination devoted two paragraphs to displaced Chechens.²⁰⁷ Meanwhile, the European Court of Human Rights has ruled admissible cases brought by displaced people in Ingushetia regarding alleged violations that occurred when the road from Chechnya was blocked.²⁰⁸ It can be seen from this brief survey that a wide range of human rights violations seem to have been committed. However, none of these bodies have as of yet come to any specific conclusions about which rights have actually been violated. To reach these, it is necessary to look at a number of issues facing the displaced people separately.

The problems facing Chechens displaced in Ingushetia in question can be divided into two categories: *proximate* issues relating to incidents and events in Ingushetia; and *systemic* problems that underlie and aggravate the displaced people's problems. The *proximate* issues will be sub-divided into three categories. The first of these is direct *forced return* to Chechnya of individuals and groups seeking refuge in Ingushetia. The second is *forcible eviction* of displaced people. Thirdly, *other forms of pressure to return* will be considered, including *harassment* by State officials and the *withdrawal of services*.

²⁰⁴ "19: Please comment on media and NGO reports that many displaced Chechen families who returned to Chechnya last year from tent camps in Ingushetia were pressured into doing so by the authorities. According to information before the Committee, a majority of displaced families prefer to remain in the camps rather than returning to Chechnya." Human Rights Committee, *List of Issues: Russian Federation*. UN Document CCPR/C/78/L/RUS of 26 March 2003

²⁰⁵ "9: What steps are being taken by the State party to ensure that Chechens who have been displaced from Chechnya, especially to Ingushetia, enjoy all economic, social and cultural rights under the Covenant?" CESCR, *List of Issues: Russian Federation*. UN Document E/C.12/Q/RUS/2 of 14 January 2003

²⁰⁶ It should be noted that three days before its slot to report to the committee in the July/August session of the Committee, the Russian Foreign Ministry announced without explanation that it was postponing its fifth periodic report (RFE/RL: International Recognition, Domestic Rebuff for Human Rights (17 July 2003) at <http://www.rferl.org/ucs/2003/07/17-170703.html>, accessed 10/09/03).

²⁰⁷ "17: The Committee is concerned that Chechens who have sought refuge outside Chechnya in the territory of the State Party are denied forced migrant status. The Committee encourages the State Party to take effective measures to ensure that no group is discriminated against in the granting of forced migrant status.

"18: The Committee is concerned about reports that displaced persons have been pressured into leaving camps while conditions of safety for their return to Chechnya are not ensured. The Committee recommends that the State Party take effective measures to ensure that the return of displaced Chechens to Chechnya is voluntary and takes place in conditions of safety and dignity." CERD, *Concluding Observations/Comments: Russian Federation*. UN Document CERD/C/62/CO/7 of 21 March 2003

²⁰⁸ see *Isayeva et al v. Russia*, *supra* n16

Underlying problems will be considered in the following chapter. These stem from *discrimination* against Chechens. Particular attention will be paid in the chapter to the violations of international law caused by the difficulties experienced by Chechens in securing *residence permits* and *forced migrant status* elsewhere in the Russian Federation, though *other forms of discrimination* will also be considered.

Proximate factors

Forced return

This section will consider three cases of individuals and groups seeking refuge in Ingushetia being forced to return into Chechnya. These are the turning back of displaced people at the border in late October and early November 1999;²⁰⁹ the transportation of railway carriages back over the border to Chechnya on 23 December 1999;²¹⁰ and the detention and transfer of human rights activists in early 2003.²¹¹ The forced movement of displaced people contravenes both international human rights law and the law of armed conflict.²¹²

There is no legally binding human rights instrument which expressly provides internally displaced persons with legal protection against being forcibly returned to places with unsafe conditions.²¹³ Prohibitions on collective expulsion, such as that in article 13 of the ICCPR and article 4 of ECHR Protocol 4 are not applicable to Chechens in Ingushetia, as they are nationals of the Russian Federation and therefore not “aliens,” and because the frontier between Ingushetia and Chechnya is not recognised as an international border. However, a number of rights are applicable. Firstly, forced return clearly negates freedom of movement. This is a right found in Article 12 of the ICCPR, which declares:

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence...

3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant...

Article 2 of Protocol 4 to the ECHR closely reflects this article, with the added possibilities for restrictions on the grounds of “public safety” and “prevention of crime. However, none of the limitations outlined above are applicable in the three stated cases. Restrictions under the ICCPR article must be “provided by law” or set down by the legislature itself, while those under the ECHR article must point to some

²⁰⁹ page 4

²¹⁰ page 4

²¹¹ page 9

²¹² The fact of the original displacement from Chechnya, by its very nature, has restricted the fundamental right to choose the place of one’s own residence and the corresponding right to freedom of movement. However, this work concentrates on the protection of people already displaced in Ingushetia.

²¹³ Deng, *Internally displaced persons : compilation and analysis of legal norms*, (Geneva: United Nations, 1998), ¶248

specific legal rule or regime which authorises the interfering act it seeks to justify.²¹⁴ These requirements have not been met in these cases, as any such legislation would seem to be in breach of article 27 of the Federal Constitution.²¹⁵ Furthermore, the *necessity* of the actions taken is also dubious. Reasons given by Federal Migration officials for resettling displaced people in northern Chechnya in October 1999 included the avoidance of leaving re-conquered Chechen regions empty and “easy prey” for the separatists, and preventing the problem of “rounding up the Chechen refugees from all over Russia” at the end of the campaign.²¹⁶ The second of these clearly does not appear in the list of necessary restrictions above; and while the first could conceivably be framed as being for “national security,” “prevention of crime” or “*ordre public*” reasons, it would be difficult to prove “necessity” for return of all civilians on this basis. Halting the convoy of displaced people and returning the train residents would thus seem to fail this test. The case of the human rights activists detained and taken to Chechnya, if this was done purely on the basis of their organising of peaceful meetings and carrying out research on human rights issues, would seem to also fail to be an exception authorised by paragraph 3, as it is not consistent with other Covenant rights, notably the rights to freedom of association²¹⁷ and expression,²¹⁸ as well as that to freedom from arbitrary detention.²¹⁹

Freedom of movement and residence within the border of the States is also guaranteed by Article 5(d)i of CERD. In their General Recommendation XXII, the treaty’s committee interpreted this right to indicate that States party are obliged to ensure that all return of internally displaced people to their place of origin is voluntary.²²⁰ This was reiterated in the context of displaced Chechens in the Committee’s Concluding Observations on the Russian Federation of March 2003.²²¹ In addition UNHCR has continually reiterated that the authorities should respect the principle of voluntary repatriation. They would consider return to be voluntary if displaced persons are fully and accurately informed about conditions for return and if they have a genuine alternative available to allow them to remain in Ingushetia.²²² The principle of voluntary repatriation has clearly not been adhered to in the three cases of the refugee column, the railway carriages and the human rights activists.

Forced movement of civilians is also addressed in Article 17 of the second Geneva Protocol,²²³ which states:

1. The displacement of the civilian population shall not be ordered for reasons related to the conflict unless the security of the civilians involved or imperative military reasons so demand. Should such displacements have to be carried out, all possible measures shall be taken in order that the civilian population may be

²¹⁴ *Silver v. UK*, A 61, ¶86 (1983). See Harris, O’Boyle and Warbrick, *Law of the European Convention on Human Rights* (London: Butterworths, 1995), p285

²¹⁵ Russian Constitution, *supra* n121

²¹⁶ Lambroschini, *supra* n21

²¹⁷ ECHR article 11; ICCPR 19(2)

²¹⁸ ECHR article 10; ICCPR 22

²¹⁹ ECHR article 5; ICCPR 9

²²⁰ CERD, *General Recommendation XXII: Article 5 and refugees and displaced persons*, adopted 24 August 1996, ¶2(b)

²²¹ CERD, *Concluding Observations*, *supra* n207

²²² See, e.g. UNHCR, *UNHCR protests*, *supra* n94

²²³ Protocol II, *supra* n184

received under satisfactory conditions of shelter, hygiene, health, safety and nutrition...

As indicated above, Protocol II would clearly have been applicable to the conflict in late 1999. Reports suggest that the initial displacement of civilians during the Russian offensive was not ordered: indeed the federal government was reported to be taken by surprise by the sheer numbers leaving their homes.²²⁴ However, the Federal Migration Service did order the return of the displaced people in the railway carriages in December 1999.²²⁵ The burden is squarely on the Russian authorities to justify the return under the narrow exceptions permitted in article 17.²²⁶ Thus, if the authorities were unable to prove that the return was ordered for the displaced people's security or imperative military reasons, a violation has occurred. The reasons given by the authorities do not seem to fit these categories. The blockade of the refugee convoy, however, if it were indeed to prevent militants from escaping, might *prima facie* be an 'imperative military reason.' However, despite this, Russia's obligations under its Constitution and human rights treaties should still have been respected.

There are other instruments which prohibit forced return to inhuman situations. Signatories of the Refugee Convention have an obligation not to return refugees forcibly to territories where their lives or freedoms would be threatened because of their race, religion, nationality, membership of a particular social group or political opinion.²²⁷ This is the principle of *non-refoulement*. However, this principle only covers those seeking refuge over international frontiers, thus excluding internally displaced people. As indicated above, though, people with *forced migrant status* are protected under Russian law from return to the federal territory (in this case the Republic of Chechnya) from which they have fled.²²⁸ However, very few displaced Chechens have been able to obtain this status and thus the vast majority are not protected by it.

However, the prohibition of forced return to inhuman situations has been established in cases under the European system. In the case of Soering v. United Kingdom, the Court held that it would be contrary to Article 3 of the ECHR to return a person to another state 'where substantial grounds have been shown for believing that the person concerned, if extradited, faces a real risk of being subjected to torture or to inhuman or degrading treatment or punishment in the requesting country.'²²⁹ In The Chahal Family v. United Kingdom, in unanimously finding that the principal applicant should not be returned to Sri Lanka, the European Commission on Human Rights noted that the guarantees in Article 3 'are of an absolute character, permitting no exception.'²³⁰ It particularly noted widespread violence and human rights violations by the police and security forces in his home region, and the lack of democratic control of policing and an independent judiciary. If it were established that the situation in Chechnya were analogous, it could be established that Article 3 has been violated in the cases in question, particularly as the Russian law 'On Federal

²²⁴ Cartner, *supra* n22

²²⁵ *ibid.*

²²⁶ Deng, *supra* n213, ¶230

²²⁷ Refugee Convention, *supra* n142, Article 33

²²⁸ Law 'On Forced Migrants', *supra* n141, Article 8

²²⁹ A 161 (1989), ¶91

²³⁰ 22414/93 (1995), ¶108-112. This judgement was upheld by the Court on 15 November 1996.

Migrants” already establishes the principle of internal *non-refoulement* within the Federation.

In addition to these general points, the specific circumstances of each incident in question also suggest other specific violations. A test case brought by people in the column of people seeking refuge in Ingushetia to the European Court of Human Rights under articles 2 and 3 has been declared admissible.²³¹

Forced eviction

This section will concentrate on two cases of camp residents in Ingushetia being forced to leave their accommodation. These are the closure of Aki Yurt camp in December 2002,²³² and the expulsions first from Bella camp and then from the Médecins sans Frontières accommodation buildings in August 2003.²³³ The issues raised would also apply to the closure of Znamenskoe camp in northern Chechnya in July 2002.²³⁴

Article 40 of the Russian Federal Constitution enshrines the right to a home and prohibits arbitrary deprivation of it.²³⁵ The article goes on to state that both federal and local government should create conditions to realise this right, and that low-income and other needy citizens, who presumably include destitute displaced people, should receive free or subsidised housing.

The right to housing is also enshrined in international human rights law.²³⁶ Article 5(e)iii of CERD guarantees equal enjoyment of the right to housing, without distinction as to ethnic origin. Article 11(1) of the ICESCR enshrines adequate housing as a component of the right of everyone to an adequate standard of living. The treaty’s committee has been the most sensitive and progressive in addressing and pursuing acts of forced eviction.²³⁷ The Committee addressed the right to adequate housing in its fourth General Comment.²³⁸ This Comment interprets the right to encompass, *inter alia*, the ‘right to live somewhere in security, peace and dignity.’²³⁹ It further states that ‘persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats.’²⁴⁰ If a government does not have the resources to fulfil the right to housing, a request should be made for international co-operation.²⁴¹ A ‘general decline in living and housing conditions, directly attributable to policy and legislative decisions by States parties, and in the absence of accompanying compensatory measures, would be inconsistent with ... the Covenant.’²⁴² Furthermore, ‘instances of forced eviction are

²³¹ *Isayeva et al v. Russia*, *supra* n16

²³² pages 7-9

²³³ page 10

²³⁴ page 6

²³⁵ Russian Constitution, *supra* n121

²³⁶ However this right does not exist *per se* under the ECHR. This is established by *X v. FRG* No 159/56, 1 YB 202 (1956) (but see below)

²³⁷ Leckie, *When Push Comes to Shove: Forced Evictions and Human Rights* (Utrecht: COHRE, 1995), p61

²³⁸ CESCR, *General Comment 4: The Right to Adequate Housing*, adopted 13 December 1991

²³⁹ *ibid.* ¶7

²⁴⁰ *ibid.* ¶8(a)

²⁴¹ *ibid.* ¶10

²⁴² *ibid.* ¶11

prima facie incompatible with ... the Covenant and can only be justified in the most exceptional of circumstances, and in accordance with the relevant principles of international law.²⁴³

Forced eviction has in itself been studied by international human rights bodies. The UN Sub-Commission and Commission on Human Rights have both passed resolutions that declared forced evictions a “gross violation of human rights.”²⁴⁴ The Committee on Economic, Social and Cultural Rights first declared forced eviction a violation of article 11(1) of the CESCR in Concluding Observations on the periodic reports of the Dominican Republic and Panama in 1990 and 1991.²⁴⁵ In 1997, the Committee adopted a General Comment specifically addressing forced evictions.²⁴⁶ The General Comment defines forced eviction as:

*...the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection [excluding] evictions carried out by force in accordance with the law and in conformity with the International Covenants on Human Rights.*²⁴⁷

The General Comment also states that, in the context of CESCR article 2(2), special attention should be paid to ensure that no form of discrimination is involved in the forced eviction of groups, including ethnic minorities that suffer disproportionately from the practice.²⁴⁸ In addition, procedural protections should be in place. These would include genuine consultation, adequate and reasonable notice, information to be made available in reasonable time on alternative accommodation, clear identification of evictors, no evictions during particularly bad weather, and legal remedies.²⁴⁹ Individuals should not be homeless or subject to violation of other human rights, and adequate alternative housing should be made available.²⁵⁰

It is clear that many of these obligations as laid out by the Committee have been violated in the case of the evictions from the camps. The evictions constitute “forced eviction” as defined by the Committee. The camp residents had no legal protection against forced eviction or harassment. Offers of international co-operation to provide alternative housing were turned down. On eviction, the residents suffered ‘a general decline in living and housing conditions.’ There was no genuine consultation on removal, and the residents’ views were not taken into account. Information about alternative accommodation was inconsistent and did not correspond to reality either for accommodation in Ingushetia or in Chechnya. The alternative accommodation was declared unacceptable by the OSCE and the UNHCR. Evictions at Aki Yurt camp were made in sub-zero temperatures. No domestic legal remedies were accessible.

²⁴³ *ibid.* ¶18

²⁴⁴ UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, resolution 1991/12, *Forced evictions*, adopted 28 August 1991.

Commission on Human Rights, resolution 1993/77, *Forced evictions*, adopted 10 March 1993

²⁴⁵ Leckie, *supra* n237, p40

²⁴⁶ CESCR, *General Comment 7: Forced Evictions*, adopted 20 May 1997

²⁴⁷ ¶3

²⁴⁸ ¶10

²⁴⁹ ¶15

²⁵⁰ ¶16

The General Comment on forced eviction also highlights the fact that the principle that the state must refrain from forced eviction is reinforced by article 17(1) of the ICCPR.²⁵¹ This article recognises, *inter alia*, the right to be protected against “arbitrary or unlawful interference” with one’s home. Article 8 of the ECHR largely corresponds to this. The interstate complaint case under Article 8 of *Cyprus v. Turkey* in 1976 dealt with forced evictions as a violation of the right to ‘respect for the home,’²⁵² Despite the fact that the circumstances were different, the case illustrates how standards dealing with protecting persons from interference with their home have been interpreted to protect dwellers from forced evictions. The European Commission held that:

“The evictions of Greek Cypriots from houses, including their own homes, which are imputable to Turkey under the Convention, amount to an interference with rights guaranteed under article 8(1) of the Convention, namely the right of these persons to respect for their home, and/or their right to respect for private life... The Commission concludes...that...Turkey has committed acts not in conformity with the right to respect for the home guaranteed in Article 8 of the Convention.”

The European system takes a broad view of what is a person’s home under article 8, including business premises²⁵³ and a caravan site.²⁵⁴ Presumably, displaced peoples’ tents could also be included. However, the rights under article 8 can be restricted for a number of reasons including necessity “in a democratic society ... for the protection of health.” The official reason for the closure of the camps, as stated by the Russian Health Ministry, was indeed the unsanitary living conditions in the camps. However, the European Court’s case law has established that “the notion of necessity implies that an interference corresponds to a pressing social need and, in particular, that it is proportionate to the legitimate aim pursued.”²⁵⁵ Given that the effects of the closure have been to make the living conditions of the many of the displaced people worse, and that offers of assistance to either improve the conditions in the camps or build alternative shelter have not been taken up; it would seem that the interference neither corresponds with the need to improve the living conditions of the displaced people, nor can be considered proportionate to this aim.

Other forms of pressure to return

This section will consider the *withdrawal of services* by the Ingush and federal authorities and *harassment* by State officials. Cases of *service withdrawal* include the refusal to register new arrivals in Ingushetia²⁵⁶ and the deregistration of longer-term displaced people,²⁵⁷ the cutting off of gas and electricity supplies,²⁵⁸ and the refusal to allow the international humanitarian community to repair damaged tents or construct new accommodation.²⁵⁹ Incidents of harassment include the pressurising of the camp

²⁵¹ ¶8

²⁵² *Cyprus v. Turkey* (Nos. 6780/74 and 6950/75), 4 EHRR 482 at 208-210 (1976)

²⁵³ *Niemetz v. Germany* Judgment 16 EHRR 97 (1993), ¶¶30-31

²⁵⁴ *Buckley v. United Kingdom* (No. 20348/92) Judgment 23 EHRR 101, ¶54. See Jacobs and White, *European Convention on Human Rights* (3rd edition, Oxford: OUP, 2002), p224

²⁵⁵ *Olsson v. Sweden* A 130 (1988), ¶67

²⁵⁶ page 5

²⁵⁷ page 7

²⁵⁸ page 8

²⁵⁹ page 7

inhabitants by Federal Security Service agents and migration officials to sign forms expressing desire to return to Chechnya,²⁶⁰ and the relocation of federal troops to positions in and adjacent to the camps.²⁶¹

Just as with forced eviction, the withdrawal of services such as gas, electricity, food aid, healthcare and education is most clearly seen as a violation of Article 11(1) of the ICESCR. General Comment 4 of this Covenant's Committee again addresses relevant issues.²⁶² Paragraph 8(b) of the Comment considers the availability of services, materials, facilities and infrastructure. It states that an adequate house must contain certain facilities essential for health, security, comfort and nutrition. All beneficiaries of the right to adequate housing should have sustainable access to natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services. Paragraph 8(d) of the Comment addresses habitability. Adequate housing must provide the inhabitants with adequate space and protect them from cold, damp, heat, rain, wind or other threats to health, structural hazards, and disease vectors. In addition, in paragraph 11, the Committee draws the conclusion that a general decline in living and housing conditions, *directly attributable to policy and legislative decisions by States parties*, and in the absence of accompanying compensatory measures, would be inconsistent with a State party's obligations under the Covenant. Thus three aspects of the right to adequate housing seem to be violated in the withdrawal of services, *viz* access to facilities such as energy and sanitation; protection from cold, damp and so on; and the decline in living and housing conditions brought on by State policy and legislative decisions not compensated for by other measures.

Article 11(2) of the ICESCR recognises "the fundamental right of everyone to be free from hunger". Article 12 proclaims "the right of everyone to the highest available standard of physical and mental health." Withdrawal of food aid and healthcare provision could violate these rights. The Treaty's Committee have declared that a "State party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is, *prima facie*, failing to discharge its obligations under the Covenant" unless it can "demonstrate that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations."²⁶³ These resources include "those available from the international community through international co-operation and assistance."²⁶⁴ As resources to satisfy these needs were offered by the international community and partially rejected, it would seem that the Russian Federation's obligations in this connection are not being met.

The withdrawal of services may also constitute a violation of CERD. That treaty's Committee, in responding to a State report of Colombia expressed concern...

²⁶⁰ pages 7 and 7

²⁶¹ page 7

²⁶² CESCR, *General Comment 4, supra* n238

²⁶³ CESCR, *General Comment 3: The Nature of States Parties Obligations*, adopted 14 December 1990

¶10

²⁶⁴ *ibid.* ¶13

*... that measures by the State party to assist the displaced have been limited and that some internally displaced persons have been forced to return to regions where minimal conditions of safety could not be guaranteed.*²⁶⁵

The Russian Federation's "measures to assist the displaced" in Ingushetia also seem worthy of such censure.

A further issue to consider in the context of service withdrawal is the State's positive obligation to protect the right to life. In General Comment 6, the Human Rights Committee suggests that the right requires States to adopt positive measures such as steps to reduce infant mortality and eliminate malnutrition and epidemics.²⁶⁶ If deregistration from lists of displaced people and subsequent denial of food aid and healthcare has led to loss of life, this obligation may be being violated.

The issue of violations caused by harassment by state officials is more difficult to categorise simply. Whereas physical harassment that leads to death or serious injury could be seen as violations of the rights to life and freedom from torture or inhuman and degrading treatment respectively, and other acts could be classified as arbitrary detention or violations of the right to privacy; harassment may not violate any rights in itself. However, it may be that the *cumulative effects* of harassment and other pressure such as service withdrawal may amount to a violation of treaty obligations in combination. Cumulative effects have been established in a number of cases to be a violation of article 3 of the ECHR.²⁶⁷ However, a more pertinent precedent may be the dissenting opinion of Judge Pettiti in the case of Buckley v. UK.²⁶⁸ Judge Pettiti argued that a range of administrative rules on designation powers and planning criteria, in combination with each other resulted...

... firstly, in it being totally impossible for a gypsy family to make suitable arrangements for its accommodation, social life and the integration of its children at school and, secondly, in different government departments combining measures relating to town planning, nature conservation, the viability of access roads, planning permission requirements, road safety and public health that, in the instant case, mean the Buckley family are caught in a 'vicious circle.'

The judge saw the extreme disruptive cumulative effects of these rules, in combination as constituting a violation of article 8 of the ECHR, in combination with article 14. It seems that the range of administrative measures brought in to discourage the displaced people from remaining in Ingushetia, such as public health orders, new planning regulations, seemingly arbitrary deregistration of camp residents, and denial of access to humanitarian organisations; in combination with the pressure put on residents to leave by state officials and troops; that have been acknowledged by the Russian Presidential Human Rights Commission to be a cause of great mental strain and uncertainty would combine to produce a situation analogous to, if not worse than, the Buckleys' "vicious circle", and hence could be seen as a violation of the rights to

²⁶⁵ Colombia, CERD, *Annual Report 1999*, UN Document A/54/18 (1999) 44, ¶467

²⁶⁶ HRC, *General Comment 6: The Right to Life*, adopted 30 April, 1982, ¶5

²⁶⁷ See, e.g. Ireland v. UK Series A 25 (1978); Magee v. UK (No. 28135/95); Kalashnikov v. Russia (No. 47095/99)

²⁶⁸ *supra* n254

private and family life and the home, as enshrined in article 8 of the ECHR and article 17 of the ICCPR.

Conclusion

We have thus seen how forced movement, forced eviction and other forms of pressure to return to Chechnya all of themselves violate a number of the Russian Federation's obligations under international law. However, these violations in Ingushetia form only part of the picture for the displaced people. If they had the possibility to settle freely elsewhere in the Russian Federation, they could easily escape the situation by doing just that. However, as indicated above, the displaced people are constrained by a number of factors from moving elsewhere in the Russian Federation. The next section looks at how these underlying factors also violate international human rights law.

Underlying issues

The plight of the Chechens displaced in Ingushetia who are unwilling to return at the moment is not merely a result of actions taken in that Republic. There are also a number of underlying structural issues that relate to discrimination against Chechens in the Russian Federation as a whole that prevent integration either in Ingushetia or elsewhere. These include the propiska-derived *residence restrictions* that prevent resettlement of displaced people in much of the Federation, and the denial of *forced migrant status* to the vast majority of Chechen displaced people.

Residence restrictions

As indicated above, the Russian Federal Constitutional Court has declared unconstitutional the housing restrictions and regulations in place in many parts of the Russian Federation.²⁶⁹ In addition to breaching constitutional rights, the situation also violates a number of norms of international human rights law.

The obvious violation caused by residence restrictions is that of the right to freedom of movement as provided for in article 12 of the ICCPR and article 2 of the 4th Protocol to the ECHR. Common paragraph 1 of both articles states:

Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence

Restrictions to this have to be “provided by law” (ICCPR) or “in accordance with law” (ECHR). This is clearly not the case with measures that have been ruled to breach the Federal Constitution. This was acknowledged by the Human Rights Committee, in commenting on the fourth periodic report to the Committee of the Russian Federation:

*20. Although federal law has provided for the abolition of the **propiska** system, the Committee is concerned that at regional and local levels, the residence permit system is still applied in practice, thus violating not only the Constitution, but also article 12 of the Covenant.*²⁷⁰

In its General Comment 27, the Committee highlights the fact that “the right to move freely relates to the whole territory of a State, including all parts of federal States”²⁷¹ The Comment goes on to state that “the manifold legal and bureaucratic barriers unnecessarily affecting the full enjoyment of the rights of the individuals to move freely ... and to take up residence” are a “major source of concern.” The Committee reiterates its criticism of “provisions requiring individuals to apply for permission to change their residence or to seek the approval of the local authorities of the place of destination, as well as delays in processing such written applications.”²⁷²

²⁶⁹ page 14

²⁷⁰ HRC, *Comments on Russian Federation*, U.N. Doc. CCPR/C/79/Add.54 (adopted 26 July 1995).

²⁷¹ HRC, *General Comment 27: Freedom of Movement*, adopted 2 November, 1999, ¶5

²⁷² *Ibid.*, ¶17

The fact that, despite the ruling of the Constitutional Court, no effective action has been taken by the state to overturn the propiska-style regulations may violate the right to an effective remedy. Article 13 of the ECHR states:

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

In the case of Conka v. Belgium, the Court stated that the ‘effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an ‘arguable complaint’ under the Convention and to grant appropriate relief.’ The ‘remedy required by Article 13 must be “effective” in practice as well as in law.’²⁷³ This seems to indicate that because the judgments of the Constitutional Court on this issue have not been effectively implemented, there has been a violation of article 13 in conjunction with article 2 of the 4th Protocol.

Article 2, paragraph (3)(a) of the ICCPR is analogous to article 13 of the ECHR. Paragraph (3)(c) goes on to explicitly state:

[Each State Party to the present Covenant undertakes to] ensure that the competent authorities shall enforce such remedies when granted.

In his Commentary on the ICCPR, Nowak states that the requirement of Article 2(3)(c) can be satisfied when a Covenant right is enforced by “an *order*, an *administrative act* or some other action by the responsible organ.” He goes on to list such actions, including “granting of permission to enter or leave or reside”.²⁷⁴ In addition, the Human Rights Committee has often, in finding that Covenant rights have been violated in individual cases, pointed out that “the State party is under an obligation ... to take steps to ensure that similar violations do not occur in the future”.²⁷⁵ However, the Committee lacks binding power under international law to grant compensation or otherwise enforce its judgments.²⁷⁶ It would therefore seem unlikely that any decision on residence regulations by the Human Rights Committee would have any more impact than those of the Constitutional Court.

An additional human rights principle that stems from the local residence restrictions is that of the right to *non-discrimination*. This has two components. The discriminatory granting of residence permission on the grounds of ethnicity, such as seems to have been the case with re-registration in Moscow in September 1999, seems to constitute discrimination in conjunction with the right to freedom to choose one’s residence, under the ICCPR or the ECHR and its 4th Protocol. However, discrimination also occurs between those who have obtained residence registration and those who have not. Those not registered at their place of residence as a rule cannot be legally employed, receive social benefits or medical assistance, vote, attend educational institutions or secure bank loans. In addition, there have been cases where courts

²⁷³ Application No 51564/99. Judgment adopted 5 February 2002, ¶75

²⁷⁴ Nowak, *U.N. Covenant on Civil and Political Rights: CCPR Commentary* (Kehl: Engel, 1993), p65

²⁷⁵ This phraseology was first used in the case of Weismann and Perdomo v. Uruguay, Communication number 8/1977 of 3 April 1980

²⁷⁶ Nowak, *supra* n274.

have refused to accept cases brought by citizens with no residence registration.²⁷⁷ This differential treatment is illegal, as the authorisation procedures have been established to contravene federal and constitutional law, and thus amounts to discriminatory practice.²⁷⁸ Under the ECHR, article 14 only protects persons against discrimination with respect to rights and freedoms set out elsewhere in the Convention. However individuals who have been refused access to courts because of not having residence registration could claim under article 14 in conjunction with article 6(1). Under article 2(2) of the ICESCR, all States Parties undertake to guarantee Convention rights without discrimination of any kind. If registration status is a status covered by this provision, the Russian Federation may be violating this article in conjunction with a number of other rights under the Convention, including article 6 (right to work), article 9 (social security), and article 12 (health). Article 26 of the ICCPR contains a general, stand-alone prohibition of discrimination on any ground. This means that it would not be necessary to establish a link with another provision of the Covenant to determine a violation of this article.

Forced Migrant Status

As indicated above, there are no legally binding international rules specifically to protect internally displaced people.²⁷⁹ Thus there are no requirements that internally displaced people should be recognised as such. However, the displaced Chechens would seem to have a case to claim that the refusal to grant them forced migrant status constitutes discrimination on grounds such as national origin, as prohibited by article 14 of the ECHR,²⁸⁰ article 2(1) of the ICCPR and article 2(2) of the ICESCR.

The letter from the Ministry of Federation, Migration and Nationalities Policy to a Parliamentary Deputy explicitly stating that Chechens are ineligible for the status, and the instructions given to officials not to give the status to Chechens, are seemingly evidence of direct discrimination: differential treatment of people in an analogous situation.²⁸¹ Article 1 of the law “On Forced Migrants” makes it clear that the assessment of whether status should be granted should be carried out on a case-by-case basis. To impose a blanket ban on the granting of this status on grounds of ethnicity is a clear violation of the provision and amounts to discrimination on the ground of ethnicity. This discriminatory practice hinders the enjoyment of a number of rights, under various international human rights treaties, such as the rights to work, home, education, health, social assistance, and personality before the law.

Article 2(1)c of CERD is also relevant in this context. The article states:

Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists

²⁷⁷ Moscow Helsinki Group, *Alternative NGO Report on Observance of the ICCPR by the Russian Federation* (2003), at <http://www.mhg.ru/english/1F24FB3>, accessed 7/09/03. Comment on article 12

²⁷⁸ *ibid.* Comment on article 2

²⁷⁹ page 19

²⁸⁰ With regards to the ECHR, “association with a national minority” may be more appropriate.

Though Forced Migrant Status cannot be regarded as a right enshrined in the Convention it is, analogously with residence permission as seen above, a prerequisite for the enjoyment of a number of rights under the Convention.

²⁸¹ The Moscow city ban on those without residence registration applying for the status also seems to constitute direct discrimination.

The implementation of the law “On Forced Migrants” seems to be perpetuating racial discrimination and thus should be amended to be clearer and less ambiguous.

A further possible problem with the implementation of the law “On Forced Migrants” is the right protected in Article 6(1) of the ECHR. This provision states, *inter alia*:

In the determination of his civil rights and obligations..., everyone is entitled to a fair and public hearing...by an independent and impartial tribunal established by law...

Oral refusal of permission to write applications for forced migrant status appears to violate this right. This is because the granting of this status is a prerequisite for the enjoyment of the rights listed in Article 4 of the law.²⁸² This refusal prevents the determination of the above-mentioned rights by a national court. This same reasoning may also apply to the benefits available with residence registration, though this would be more contentious because of the notion that the benefits were available elsewhere in the territory of the State.

Other forms of discrimination against ethnic Chechens

The discrimination that Chechens face with regard to residence and forced migrant status are compounded by other forms of discrimination. These include:

- Falsification by the police of criminal cases with the widespread planting of ammunition, arms and drugs.²⁸³
- Denial of jobs to Chechens, even if the candidates have residence permits.²⁸⁴
- Lower salaries and benefits than other workers.²⁸⁵
- Refusal of admission to certain places open to the public, such as hotels, in Moscow and Moscow Oblast.²⁸⁶
- Refusal by medical staff to treat Chechen patients.²⁸⁷
- Constant bullying of Chechen children by teachers, school administrators and other pupils at schools.²⁸⁸

The above examples, in addition to the violations that result from denial of registration and forced migrant status, reveal a systematic pattern of denial to many Chechens of many of the civil, political, economic and social rights that the Russian Federation is obliged to uphold by treaty. In particular, the rights laid out in article 5 of CERD to be guaranteed without distinction seem to be forgotten. However, the

²⁸² This includes rights to social assistance, temporary housing, food and medical care. It should be noted that the term “civil rights” has an autonomous meaning under the ECHR. In a judgment the Court has stated that ‘the development in the law (...) and the principle of equality of treatment warrant taking the view that today the general rule is that Article 6 § 1 does apply in the field of social assistance, including even welfare assistance.’ Schuler-Zgraggen v. Switzerland Series A 263 (1993) at p17

²⁸³ Moscow Helsinki Group, *Nationalism*, *supra* n114, p316

²⁸⁴ *ibid.*, pp318-320

²⁸⁵ *ibid.*, p320

²⁸⁶ ECRI, *supra* n134, ¶31

²⁸⁷ Moscow Helsinki Group, *Nationalism*, *supra* n114, p321

²⁸⁸ *ibid.* pp323-324

examples also reveal willingness on society's part to engage in discriminatory practices. Under Article 7 of CERD states undertake...

“..to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups...”

Though there are some token measures taken in this field, they are not sufficient.²⁸⁹ Education on human rights and tolerance at schools is optional and sporadic, while the media in general does not reflect the multi-ethnic nature of Russian society.²⁹⁰ Indeed, Russian mass media ‘consistently portray Chechens as an ‘internal enemy’ aiming to destroy the Russian state.’²⁹¹ Such portrayals, though theoretically punishable under the criminal code, are not investigated and prosecuted by the authorities.²⁹² This would seem to violate article 4(c) of CERD.²⁹³ The failure to prosecute media incitement to racial hatred is matched by the failure to prosecute effectively on the grounds of racial discrimination, despite provisions that could be applied in this regard under the Constitution and the Civil Code. The Statute does not provide administrative remedies for individual protection and compensation.²⁹⁴ This would seem to breach article 6 of CERD.²⁹⁵

The CERD Committee and the Advisory Committee on the Framework Convention for the Protection of National Minorities have both recently published opinions on discrimination in the Russian Federation.²⁹⁶ Both addressed the widespread discrimination against Chechens in the Russian Federation. As well as the pressure on Chechens in Ingushetia to return to Chechnya, CERD expressed concern about racially selective inspections and identity checks,²⁹⁷ discrimination with regard to residence registration,²⁹⁸ and denial of forced migrant status.²⁹⁹ With regard to the justification for discriminatory regulations on the grounds of counter-terrorist necessity, the Committee reaffirmed its statement of 8 March 2002 underlining the State obligation to ‘ensure that measures taken in the struggle against terrorism do not discriminate in purpose or effect on grounds of race, colour, decent, or national or

²⁸⁹ Memorial, *Shadow NGO report on CERD*, *supra* n131, ¶170

²⁹⁰ *ibid.* ¶¶173-174

²⁹¹ International Helsinki Federation for Human Rights, International League for Human Rights and International Service for Human Rights, *Statement to the 59th Session of the Commission on Human Rights* (ILHR website, 2003) at http://www.ilhr.org/ilhr/regional/russia/un_chechnya_2003.htm, accessed 9/09/03

²⁹² Memorial, *Shadow NGO report on CERD*, *supra* n131, ¶100

²⁹³ This article reads ‘[St ates Parties s]hall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.’

²⁹⁴ Memorial, *Shadow NGO report on CERD*, *supra* n131, ¶¶160-169

²⁹⁵ This article reads: ‘Stat es Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.’

²⁹⁶ CERD, *Concluding Observations*, *supra* n207. Advisory Committee, *Opinion on the Russian Federation*. Adopted 13 September 2002. Document ACFC/INF/OP/I(2003)005

²⁹⁷ CERD, *ibid.* ¶13

²⁹⁸ *ibid.* ¶14

²⁹⁹ *ibid.* ¶17

ethnic origin.’³⁰⁰ Furthermore it condemns the widespread dissemination in the national media of racist materials³⁰¹ and the high incidence of violent racist attacks against minorities.³⁰² The Committee recommends human rights education of law enforcement officials,³⁰³ the enforcement of constitutional rights with regard to residence permission and forced migrant status,³⁰⁴ and federal legislation to protect the rights of minorities.³⁰⁵

The Advisory Committee on the Framework Convention also considers the efforts taken to enforce federal law and human rights standards with regard to registration and forced migrant status to be insufficient to meet the requirements of article 4 of the Convention regarding equal protection before the law of national minorities.³⁰⁶ In the context of article 6(1) of the Convention,³⁰⁷ the Committee is concerned about negative societal attitudes towards Chechens.³⁰⁸ In this context it welcomes federal statements promoting inter-ethnic tolerance, but regrets negative statements by some regional politicians, portraying Chechens and other ethnic groups as being responsible *en masse* for local criminal activities.³⁰⁹ It is particularly concerned about racist attacks, which have low rates of investigation and prosecution. Like the CERD Committee, it suggests that additional human rights education for law enforcement officers ‘could contribute to the consistent enforcement of the applicable legislation and help to counter these phenomena.’³¹⁰ Furthermore, it notes with concern the lack of equal educational opportunities for Chechen children, in contravention of article 12(3) of the Convention.³¹¹

The attention of these and other international human rights treaty bodies is obviously welcome. But to what extent does it actually affect the situation on the ground? The final chapter looks at the effectiveness of international human rights remedies in meeting the needs of the Chechens displaced in Ingushetia.

³⁰⁰ *ibid.* ¶24. Quote from CERD, *Statement on racial discrimination and measures to combat terrorism*. In *Annual Report 2002*. UN Document A/57/18 of 1 November 2002, chapter XI, §C, ¶5

³⁰¹ *ibid.* ¶25. See article 4 of CERD

³⁰² *ibid.* ¶27

³⁰³ *ibid.* ¶13

³⁰⁴ *ibid.* ¶14 and ¶17

³⁰⁵ *ibid.* ¶21. See article 6 of CERD

³⁰⁶ Advisory Committee, *supra* n296, ¶¶39-40. Paragraph 1 of the article reads: ‘The Parties undertake to guarantee to persons belonging to national minorities the right of equality before the law and of equal protection of the law. In this respect, any discrimination based on belonging to a national minority shall be prohibited.’

³⁰⁷ The paragraph reads: ‘The Parties shall encourage a spirit of tolerance and intercultural dialogue and take effective measures to promote mutual respect and understanding and co-operation among all persons living on their territory, irrespective of those persons’ ethnic, cultural, linguistic or religious identity, in particular in the fields of education, culture and the media.’

³⁰⁸ *ibid.* ¶58

³⁰⁹ *ibid.* ¶60

³¹⁰ *ibid.* ¶59. This relates to article 6(2) of the Convention: ‘The Parties undertake to take appropriate measures to protect persons who may be subject to threats or acts of discrimination, hostility or violence as a result of their ethnic, cultural, linguistic or religious identity.’

³¹¹ *ibid.* ¶90 The paragraph reads: ‘The Parties undertake to promote equal opportunities for access to education at all levels for persons belonging to national minorities.’

Chapter 4 – In conclusion: an overview of remedies

In order to assess the value of international human rights remedies in dealing with these problems, it is first necessary to ascertain the needs of the displaced Chechens in Ingushetia. The ideal situation, of course, would be for the displaced people to return voluntarily to a post-war Chechnya, and to live there in peace and security, with good quality housing, a healthy economy, and a climate in which all human rights are respected. However, it is outside the scope of this paper to visualise how the armed conflict can be ended satisfactorily. In the meantime, it is clear from this study that a broad range of measures should be taken to alleviate the plight of those displaced by the conflict and allow them to live lives with security and dignity outside Chechnya while the unacceptable conditions in Chechnya persist. The measures detailed in the following two paragraphs have all been determined in this paper to be obligations of the Russian Federation under the international human rights treaties to which it is party.

With regards to measures on the ground in Ingushetia, the authorities should desist from ordering, supporting or allowing any forced return to Chechnya, or any forced eviction from accommodation that is available in Ingushetia. They should also contain to provide the services necessary for the displaced people and refrain from allowing harassment by public officials of camp residents. As recognised by the Russian Health Ministry, the camps are unsanitary and unsuitable for habitation. However, instead of pressuring residents to relocate to even less suitable accommodation, the authorities should upgrade the camps, provide alternative accommodation for the displaced people or allow international humanitarian organisations to carry out these tasks.

The authorities also need to take measures at the Federal level. The Federal government should enforce Constitutional Court rulings on the illegality of housing restrictions derived from propiska. It should enforce the law ‘On Forced Migrants’ in a way that does not discriminate against ethnic Chechens. It should improve training of public servants, such as law enforcement officials, the judiciary, teachers and medical workers, to ensure they are aware of, and respect, human rights standards in their work. It should enforce laws outlawing discrimination and incitement to hate crimes. Finally it should make efforts to replace the overwhelmingly negative portrayal of Chechens as terrorists and criminals in the media, with a fairer depiction, that reflects the true nature of the majority of Chechens, along with other measures to combat prejudice in Russian society.

Now that we have visualised the measures that need to be taken by the authorities to enforce their human rights obligations, it is necessary to see which international remedies can aid in this process, and how they can do this. A number of ways to seek to redress the situation through international treaty bodies have been mentioned in the previous chapter, and will be summarised below. This will be followed by a brief discussion of other ways forward.

At the global level, most of the Committees that oversee implementation of the major United Nations human rights treaties tackle treaty violations in specific countries through two of their functions – the review of States parties’ periodic reports, and the

examination of individual complaints.³¹² As indicated above, in their comments on the Russian Federation's periodic reports, and their lists of questions to be addressed in the reports, the Human Rights Committee, the Committee on Economic, Social and Cultural Rights and the Committee for the Elimination of Racial Discrimination have all drawn the government's attention to the situation of displaced Chechens in Ingushetia and elsewhere. Russian NGOs have produced and publicised shadow reports to the HRC and CERD, both of which raise issues about the situation under various articles of the respective treaties, and propose questions to be asked to the government.³¹³ The reporting process is a useful tool for NGOs to focus on human rights violations and raise awareness domestically and internationally about issues that arise.

Individual communications to global treaty bodies would also be a means by which displaced persons could bring complaints to international attention. However, as indicated above, though findings of violations impose obligations on states, there is no effective mechanism to enforce such findings. The European Convention, however, has a much stronger enforcement mechanism by comparison.³¹⁴ A number of cases brought by Chechens against the Russian Federation have recently been declared admissible by the European Court of Human Rights,³¹⁵ and more cases in this mould are likely to follow.³¹⁶ It will be interesting to see the legal and administrative steps the Federal government takes to rectify the situation, if violations of the ECHR are adjudged to have been committed in such cases.

Measures taken by international and regional human rights treaty bodies are just part of the story, however. There are a number of other institutions that might also be in a position to assist the displaced Chechens improve their situation. The thematic mechanisms of the United Nations' Commission on Human Rights have a role to play in making suggestions and putting pressure on the Federal government to improve the situation of displaced Chechens. Of the thematic mechanisms, only the special representative on children and armed conflict has been allowed to visit Chechnya and Ingushetia and looked in detail into the situation. The Special Rapporteurs on torture; extrajudicial, summary or arbitrary executions; and violence against women; and the Special Representative of the Secretary-General on internally displaced persons have all requested to undertake missions to Chechnya and neighbouring regions but have all had their requests refused or postponed.³¹⁷

³¹² At present, pending the adoption of an Optional Protocol on the matter, the ICESCR Committee has no power to receive individual petitions.

³¹³ See Memorial, *Shadow NGO report on CERD*, *supra* n131, and Moscow Helsinki Group, *Alternative NGO Report on the ICCPR*, *supra* n277

³¹⁴ Harris *et al.*, *supra* n214. Article 46(2) of the ECHR states: "The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution."

³¹⁵ *Isayeva et al.*, *supra* n16; *Khashiyev and Akayeva v. Russia*, Admissibility Decision, 19 December 2002, Nos. 57942/00 and 57945/00; *Isayeva v. Russia*, Admissibility Decision, 19 December 2002, No. 57950/00

³¹⁶ Bird, *Chechnya: the Fight for Rights* (Time website, 3 February 2003), at <http://www.time.com/time/europe/magazine/article/0,13005,901030203-411387,00.html>, accessed 10/09/03

³¹⁷ High Commissioner for Human Rights, *Report on the Situation in the Republic of Chechnya of the Russian Federation submitted in accordance with Commission resolution 2001/24*, 26 February 2002. UN Document E/CN.4/2002/38, ¶¶7-11. Coomaraswamy, *Report on Violence against Women*, 6 February 2003. UN Document E/CN.4/2003/75, ¶5

Other rapporteurs, notably the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, should also address the issues facing Chechens in the Russian Federation and particularly Ingushetia. While the holders of this post have received and acted on a number of communications about the problems of Jews and Meskhetian Turks in the Russian Federation, reference to the problems of Chechens have been noticeably absent over this period, with just a passing mention in 2003.³¹⁸

Given the wide range of human rights violations outlined, as well as those taking place in Chechnya itself, perhaps a country rapporteur for the Russian Federation with particular reference to the situation in Chechnya may be warranted. However, given the fact that the Commission on Human Rights in 2002 and 2003 voted against resolutions on Chechnya that did not appoint rapporteurs, it seems highly unlikely that a stronger resolution that establishing such a mechanism will be passed in the foreseeable future.

A regional non-legal mechanism that would seem relevant is the OSCE.³¹⁹ The OSCE's High Commissioner on National Minorities would not be able to deal with the problems of Chechens in the Russian Federations, as his mandate only authorises him to deal with "tensions involving national minority issues which have not yet developed beyond an early warning stage"³²⁰ and specifically forbids him to work "in situations involving organized acts of terrorism."³²¹ However, the Office for Democratic Institutions and Human Rights (ODIHR), which works "to ensure full respect for human rights and fundamental freedoms, to abide by the rule of law, to promote principles of democracy and... to build, strengthen and protect democratic institutions, as well as promote tolerance throughout society,"³²² would seem to have a role to play. The ODIHR provides a range of technical assistance to governments in a variety of human rights related issues, including the promotion of freedom of movement and the rule of law.³²³ However, OSCE's work is limited by restrictions put in place by the host government. The OSCE Assistance Group to Chechnya, which was mandated to "promote respect for human rights and fundamental freedoms," did not see its term extended in January 2003, when the OSCE refused to remove human rights promotion from its mandate as requested by the Russian authorities.³²⁴

³¹⁸ Diène, *Report on Racism, Racial Discrimination, Xenophobia And All Forms Of Discrimination submitted pursuant to Commission on Human Rights resolution 202/68*, 30 January 2003. UN Document E/CN.4/2003/24, ¶41. Previous reports available at UNHCHR website www.unhchr.ch.

³¹⁹ Rather than being based on legally-binding Conventions, as is the Council of Europe, the OSCE is based on politically-binding commitments. This offered the gaining of more extensive rights at the expense of effective measures of enforcement (Gilbert: *The Council of Europe and Minority Rights* 18 HRQ (1996) 160 at 172).

³²⁰ CSCE, *Helsinki Document 1992*, §II ¶3

³²¹ *ibid.* §II ¶5b

³²² *ibid.* §VI ¶2

³²³ OSCE, *Factsheet on Office for Democratic Institutions and Human Rights* (date unknown), at <http://www.osce.org/odihr/overview/>, accessed 10/11/03

³²⁴ OSCE, *The OSCE Assistance Group to Chechnya* (2003), at <http://www.osce.org/publications/survey/survey12.htm>, accessed 10/11/03

Notwithstanding the value of all of the international remedies outlined above, it is vital to remember the importance of domestic measures to bring about positive social change. One of the best ways for the international community to attempt to help resolve the problems of the displaced Chechens in Ingushetia is to support the Russian and Chechen organisations that are already working to promote human rights and ethnic tolerance on the ground, and to document and oppose discriminatory and unlawful practices. Federal NGOs such as Memorial and the Moscow Helsinki Group, as well as their local partners in Ingushetia, Chechnya and elsewhere, are crucial in this respect. Similarly, the Presidential Commission on Human Rights, which consists of a number of representatives of domestic human rights organisations helps to bring such issues to the heart of government. It was after a meeting with this Commission on the 10th December 2003 that Putin declared a suspension of the programme of camp closures. In remarks to the Committee at that meeting, Putin himself acknowledged that “there is a huge gap between the constitutional guarantees and the real opportunities for people to exercise their rights.”³²⁵ In the end a closing of this gap, and the opportunity for displaced Chechens to enjoy their rights under the Constitution and international law, is necessary until a durable solution to the tragedy in Chechnya is found.

³²⁵ Quote taken in translation from Federal News Service, *Remarks By President Vladimir Putin At A Meeting With The Members Of The Presidential Human Rights Commission, The Kremlin, December 10, 2002*. Available online at Johnson’s Russia List website, <http://www.cdi.org/russia/johnson/6601.htm>, accessed 11/09/03

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This dissertation is dedicated to all the displaced teachers, child psychologists and youth workers living in the tent camps of whom I was briefly a colleague at CPCD and; to all the other camp residents, in particular the children; and to the hope that somehow one day soon things will get better for all of them.