



UNHCR

United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés

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11 November 2009
063

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**Your letter of 10 July 2009
- Ref: BMI-ID1000/0227-BAA-GDA/2009 -**

Dear Mr. Taucher,

I would like to thank you for your letter of 10 July 2009 and the dialogue it invites with UNHCR on the assessment of applications for international protection made by asylum-seekers from the Chechen Republic of the Russian Federation. Following internal consultations, we are pleased to provide further clarification as requested.

As you know, the situation in the Chechen Republic has changed significantly in recent years, as outlined in our letter to you dated 7 April 2009. The main aim of our letter was to revise UNHCR's 2003 positionⁱ in light of the improved military and security situation in Chechnya. In view of continuing human rights violations, which may lead to well-founded claims for international protection, UNHCR stressed that Chechen claims should be thoroughly assessed on an individual basis in a fair and efficient procedure to determine whether they are refugees under Article 1 of the 1951 Convention relating to the Status of Refugees or qualify for complementary forms of protection such as subsidiary protection under Article 15 of the Qualification Directive.

By way of guidance to assist in the interpretation of protection criteria, our letter indicated that the Office considers that the following groups may face a particular risk of targeted human rights violations: members of illegal armed groups and their relatives, political opponents of the federal or Chechen authorities, human rights activists, persons who have held official positions in the previous administration of former President Aslan Maskhadov, those who may have lodged complaints with regional or international human rights bodies and, in particular circumstances, women and children.

In the meantime, the Russian Federal authorities announced on 16 April 2009 the end of the Federal counter-terrorism operation that had been in force in the region since 1999.ⁱⁱ As recently noted by the Council of Europe Parliamentary Assembly's Committee on Legal Affairs and Human Rights, however, the situation in Chechnya is "far from stable and the insurgents are still active".ⁱⁱⁱ While there was indeed some improvement in the human rights situation until May 2008, there has been an increase in

abductions since then, most victims reportedly being released only after being tortured and threatened.^{iv} There have also been several significant recent events of serious concern, including the killing on 15 July 2009 of human rights activist Ms Natalya Estemirova,^v who worked for Memorial, one of UNHCR's implementing partners, and the kidnapping and killing a month later of Ms Zarema Sadulayeva and her husband Mr Alik Dzhabraïlov, who were both involved in a children's charity, Save the Generation.^{vi} These murders led to the withdrawal from the Chechen Republic of two leading human rights organizations,^{vii} thereby increasing further the difficulty of, and the risks associated with, securing detailed, reliable information regarding the situation there. Most recently, the UN Human Rights Committee has expressed concern at "ongoing reports of torture and ill-treatment, enforced disappearance, arbitrary arrest, extrajudicial killing and secret detention in Chechnya and other parts of the North Caucasus committed by military, security services and other state agents". It found that "the authors of such violations appear to enjoy widespread impunity due to a systematic lack of effective investigation and prosecution" and that "the number of disappearances and abduction cases in Chechnya has increased in the period 2008-2009".^{viii}

UNHCR is not in a position to provide detailed updated eligibility guidelines at this time, given *inter alia* the limited possibilities for monitoring of the situation. The position outlined briefly in our April 2009 letter regarding the need for an individualized assessment of international protection needs in a regular, not accelerated asylum procedure, continues to stand, however, in particular in light of the continually evolving and volatile security and human rights situation.

In your letter of 10 July 2009, you raise particular questions regarding a number of categories of persons mentioned in UNHCR's April 2009 letter. Firstly, in relation to persons who held official positions in the administration of former President Aslan Maskhadov, a case-by-case assessment of persons claiming persecution on these grounds will depend upon a range of different factors, including, as your letter mentions, their rank within the Maskhadov Government.^{ix} In addition, the extent to which such persons may be perceived as opponents of the current government should be borne in mind and, as outlined in our letter of 7 April 2009, whether or not the exclusion clauses of Article 1F of the 1951 Convention apply.


Secondly, your letter requests clarification regarding persons who have lodged complaints with regional or international human rights bodies. On this issue, the Committee on Legal Affairs and Human Rights of the Council of Europe's Parliamentary Assembly reports that "victims' family members have suffered reprisals, including murder, in order to dissuade them from bringing their case before the Court" and that "Amnesty International continues to receive information that people who have brought cases before the Russian courts or the European Court of Human Rights have allegedly been the victims of reprisals".^x

The third group mentioned in your letter as requiring further information is that of women and children who may under particular circumstances be at risk of persecution or serious harm. While the situation for women and children may have improved with the reduction of widespread and indiscriminate violence in the Chechen Republic, UNHCR nevertheless concludes that they may be in need of international protection in some circumstances. This is based on publicly available sources on the situation of women and children in the Chechen Republic. For instance, women may be vulnerable to gender-based violence and persecution due to the prevalence of traditional practices including forced marriage, polygamy, blood feuds, bride abduction or honour killings.^{xi} Women may also be victims of domestic violence, an issue that generally remains hidden and dealt with within the clan structure. The lack of specific legislation on domestic violence in Russia, the breakdown of law and order in Chechnya, severe

lack of confidence in the authorities there, pressure on women from marginalized groups to maintain group cohesion, taboo and silence, coupled with fear of ostracism or reprisals within the community reportedly result in domestic violence being seldom reported to, or investigated by, the authorities.^{xii} The claims of women and children from the Chechen Republic, which raise issues of gender-based persecution, in particular those originating from areas, affected by violence and human rights abuses, should therefore be given particular attention.^{xiii}

I hope this clarification of Usher's position in relation to persons from the Chechen Republic seeking international protection is helpful and I apologise for the delay in replying. I look forward to further dialogue with you on this matter and would be grateful if you could share this letter with Mr Van den Bulck and Mr Rogala.

Yours sincerely,



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UNHCR Representative for
Austria and Germany

ⁱ UNHCR, *UNHCR Paper on Asylum Seekers from the Russian Federation in the Context of the Situation in Chechnya*, Feb.2003, available at: <http://www.unhcr.org/refworld/docid/3ea7bbd34.html> [all web links were last accessed in early Nov. 2009]. This paper set out UNHCR's recommendation that all asylum-seekers from the Chechen Republic, in cases where exclusion did not apply, should be granted international protection due to the widespread and serious violations of human rights and humanitarian law within Chechnya resulting from the situation of generalized violence prevailing at that time.

ⁱⁱ "Russian 'ends Chechnya Operations'", BBC News, 16 April 2009, available at: <http://news.bbc.co.uk/2/hi/europe/8001495.stm>; Amnesty International, "Russian Federation Rule Without Law: Human Rights Violations in the North Caucasus", 1 July 2009, available at: <http://www.amnesty.org/en/library/asset/EUR46/012/2009/en/66cda198-85c0-452c-a2c5-98cac593a990/eur460122009en.pdf>, p. 8.

ⁱⁱⁱ Council of Europe, Parliamentary Assembly, Committee on Legal Affairs and Human Rights, "Situation in the North Caucasus Region: Security and Human Rights", AS/Jur (2009) 43, 29 Sept. 2009, available at: http://assembly.coe.int/CommitteeDocs/2009/ajdoc43_2009.pdf, paras. 13–15.

^{iv} *Ibid.*, paras. 16–19.

^v "Natalya Estemirova", *New York Times*, 16 July 2009, available at: http://topics.nytimes.com/top/reference/timestopics/people/e/natalya_estemirova/index.html?inline=nyt-per.

^{vi} See, "Two More Activists have met Horrifying Deaths in Chechnya – There must be an Investigation, or More Murders will Follow", *The Guardian*, 13 Aug. 2009, available at: <http://www.guardian.co.uk/commentisfree/2009/aug/13/chechnya-activists-murder>; "Journalists and Human Rights Lawyers Killed in Russia", *The Guardian*, 15 July 2009, available at: <http://www.guardian.co.uk/world/2009/jul/15/journalists-killed-in-chechnya-russia>; C.L. Levy, "Two Chechen Aid Workers are Killed", *New York Times*, 11 Aug. 2009, available at: <http://www.nytimes.com/2009/08/12/world/europe/12chechnya.html>; C.J. Chivers, "Critic of Chechen President is Killed in Exile in Vienna", *New York Times*, 13 Jan. 2009, available at: <http://www.nytimes.com/2009/01/14/world/europe/14chechnya.html>.

^{vii} A. Rettman, "EU Speaks Out on Chechnya Murders", *EU Observer*, 13 Aug. 2009, available at: <http://euobserver.com/9/28544>.

^{viii} Human Rights Committee, "Concluding Observations", CCPR/C/RUS/CO/6, 29 Oct. 2009, para. 14.

^x See, e.g., Ruslan Isayev, 'Detentions of Citizens who Worked for the Maskhadov Government Continue in the Chechen Republic', *Prague Watchdog*, 12 May 2007, available at: <http://www.watchdog.cz/index.php?show=000000-000008-000001-000437&lang=1&bold=Ruslan%20Isayev>, referring to the arrest of a former member of the border service under the Ichkerian government; Vyacheslav Izmailov, "Russia has Lost the War to Ichkeria", *Novaya Gazeta*, 19 Feb. 2007, available at: <http://www.novayagazeta.ru/data/2007/12/11.html> (in Russian); Vyacheslav Izmailov, 'The Guys from Zakan-Yurt, and Others', *Novaya Gazeta*, 12 March 2007, available at: <http://www.novayagazeta.ru/data/2007/17/05.html> (in Russian). Further examples of publicly available information on the risks such persons may face include the reported killing in March 2009 of former field commander to Aslan Maskhadov Sulim Yamadayev in Dubai on the one hand and statements made in November 2008 in support of President Ramzan Kadyrov by former Ichkerian Health Minister Umar Khambiyev and his return from exile in Italy on the other. (For the latter, see Dzhambulat Are, "The Prodigal Son's Confession", *Prague Watchdog*, 25 Nov. 2008, available at: <http://www.watchdog.cz/?show=000000-000004-000001-000250&lang=1>.)

^x Council of Europe, Parliamentary Assembly, Committee on Legal Affairs and Human Rights, "Legal Remedies for Human Rights Violations in the North Caucasus", AS/Jur (2008) 21, 11 April 2008, available at: http://assembly.coe.int/CommitteeDocs/2008/20080411_ajdoc21_2008.pdf, para. 18.

^{xi} "International Women's Day in Focus: Chechnya", 8 March 2009, Samantha Brietich, Georgetown University, *Diplomatic Courier*, available at: <http://www.diplomaticcourier.org/kmitan/articleback.php?newsid=325>; "Women Found Murdered in Chechnya", *North Caucasus Analysis*, vol. 9, issue 46, 8 Dec. 2008, available at: [http://www.jamestown.org/programs/ncw/single/?tx_ttnews\[tt_news\]=34221&tx_ttnews\[backPid\]=169&no_cache=1](http://www.jamestown.org/programs/ncw/single/?tx_ttnews[tt_news]=34221&tx_ttnews[backPid]=169&no_cache=1); Centre for Country of Origin and Asylum Research and Documentation (ACCORD), *Chechnya: Summary of the ACCORD-UNHCR Country of Origin Information Seminar (Vienna, 18 October 2007)*, April 2008, available at: <http://www.unhcr.org/refworld/docid/480dfb652.html>, p.10; Elizabeth Penderl, *Gender-Based Violence Technical Assessment Report*, International Rescue Committee Northern Caucasus Program, Sept. 2006; R. Isayev, "Polygamy in Present Day Chechnya", *Prague Watchdog*, 9 May 2005, available at <http://www.watchdog.cz/index.php?show=000000-000015-000006-000013&lang=1>; CARE, *Gender Based Violence Baseline Survey of Chechen IDPs and Private Residents In Chechnya and Ingushetia*, Care International, Chatelaine, Switzerland, Oct. 2004.

^{xii} The *Criminal Code of the Russian Federation* contains provisions punishing sexual violence in Chapter 18, Articles 131–135, available at: <http://www.legislationline.org/documents/section/criminal-codes>. For more on the situation of women in the Russian Federation and in particular in the North Caucasus including Chechnya, see UN Commission on Human Rights, "Report on violence against women, its causes and consequences, Yakin Ertürk, Addendum, Mission to the Russian Federation", 26 Jan. 2006, E/CN.4/2006/61/Add.2, available at: <http://www.unhcr.org/refworld/docid/441182110.html>, paras. 16, 51–68, 79–80. See also Amnesty International, *Russian Federation: Nowhere to turn to. Violence against women in the family*, 14 Dec. 2005, available at: <http://www.amnesty.org/en/library/info/EUR46/056/2005/en>; Medical Foundation for the Care of Victims of Torture, *Rape and Other Torture in the Chechnya Conflict: Documented evidence from asylum seekers arriving in the United Kingdom*, April 2004, available at <http://www.torturecare.org.uk/files/Chechnya%20Report.pdf>; Committee on the Elimination of Discrimination against Women, "Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Combined sixth and seventh periodic reports of States parties, Russian Federation", CEDAW/C/USR/7, 9 March 2009, available at: <http://www.unhcr.org/refworld/pdfid/4a1fa06c2.pdf>, para. 12.

^{xiii} See UNHCR, *Guidelines on International Protection. Gender-related Persecution Within the Context of Article 1(A)(2) of the 1951 Convention relating to the Status of Refugees*, 7 May 2002, available at: <http://www.unhcr.org/refworld/docid/3d36f1c64.html>. The Russian Federation has ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and its Optional Protocol and the Russian Constitution, available at: <http://www.unhcr.org/refworld/docid/3ae6b59f4.html>, affirms the principles of non-discrimination and equal rights and freedoms for men and women (Article 19).