Summary

Between Revenge and Oblivion: A Transitional Justice Concept for Russia

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Summary

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Impunity for crimes has become commonplace in Russia. A crime can remain without an appropriate legal response for reasons that the state is not in a position to prevent. However, many failures by law enforcement organs are caused by their non-performance of their legal duties or by defects in the laws themselves. In those instances where the government does not want to prevent or investigate crimes, or it purposefully conceals them, there arises a circumstance of state-sanctioned (systemic) impunity.

An appropriate legal response to such crimes is not possible until the government finds sufficient will to end impunity and overcome its consequences. However, even when the necessary political will is found, a delayed response to crimes can encounter various legal, organisational, and political obstacles.

These peculiarities of state-sanctioned violations — as well as the specific tasks and restrictions that influence the justice system in conditions of political transformation — give rise to the neccesity of introducing special legal mechanisms for remedying the consequences of such violations. These legal mechanisms are, in contemporary international practice and academia, commonly called *transitional justice*.

Transitional justice aims to ensure an effective and appropriate response to previously unpunished gross violations of human rights and other serious violations of the law that have been permitted by the authorities. It also aims to uncover the circumstances in which these violations occurred; to bring the perpetrators to account and impose on them legal and fair punishment; to compensate the harm caused to victims; and to establish guarantees that unlawful encroachments will not recur.

In the hope of returning Russia to the path of building a democratic and law-governed state, transitional justice should be planned in advance. For this reason, the authors of this report have attempted to prepare and propose for discussion a model of future transitional justice in Russia.

The report includes a brief description of theory; foreign and international transitional justice practices; its legal and methodoloical foundations (sections 3-4 of the Introduction); the rationale for determining the targets of transitional justice in Russia (Chapter 1); and its characteristics (Chapters 2-6). The most significant part of the report is the framework for transitional justice legislation (Chapter 8) and its institutional design (Chapter 9).

The proposed concept of transitional justice is based on an “ideal model,” in which the state authorities of the transition period are not bound by obligations to the previous government, and also possess the necessary political will, actual capacity, and sufficient time to implement any measures they deem necessary. The sole restriction placed on such measures is respect for human rights and the principle of the rule of law.

In the UN Secretary-General's report, *The rule of law and transitional justice in conflict and post-conflict societies*, transitional justice is defined as the "range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation." According to a widespread view, which is notably adopted by the UN, transitional justice includes the following fundamental mechanisms (institutions): criminal prosecution, fact-finding, reparations, and guarantees that violations will not recur (among which lustration is usually emphasised). Transitional justice is opposed to two extremes that often manifest themselves during the transformation of society from repressive authoritarianism to democracy: revenge and oblivion. It is designed to ensure national reconciliation on the basis of justice, to develop immunity to lawlessness, and to defend the future from any recurrence of the past. At the same time, the authors of the report have attempted to avoid mechanically transplanting the ideas of *transitional justice* to Russian soil, and to instead propose means for tackling systemic impunity in Russia by drawing on domestic and foreign experiences.

The authors propose to select **the targets of transitional justice** (Chapter 1) using four criteria: (1) violations that infringe on human rights or the foundations of the constitutional order; (2) the persistence of impunity for systemic reasons; (3) the existence of genuine interest in a legal response; and (4) demand from society or victims for justice. Using these, five main domains of unlawful activity that transitional justice should focus on are identified: offences aimed at appropriating or retaining state power; violations in the context of armed conflicts involving Russia; corruption offences; other violations of constitutional human rights; and also the crimes of the Communist regime in Soviet Russia. The last category is distinct from the others not only on the basis of chronology, but also for the reason that certain measures for overcoming impunity for these crimes have already been undertaken.

A detailed description of the listed domains of unlawful activity are presented in Chapters 2-5 of this report. The description is organised around patterns of behaviour that signify the sustained recurrence of criminal acts in similar contextual circumstances. **Patterns of unlawful behaviour** (or, in other words, contextual domains) are considered from different points of view. As illustrations, examples of reports of a given type of violation are provided. Characteristic targets of unlawful encroachments, as well as areas of state practice in which the unlawful activity occurs, are identified. Offences, evidence of which are found in reports on relevant activities, are specified, as are the legal basis for restorative measures (reparations). The overview of restorative measures is intended to demonstrate the means that can be used to overcome the consequences of violations, in accordance with laws that are currently in force. Separately, evidence of impunity is discussed.

Among **offences aimed at appropriating and retaining power** (Chapter 2), the following strands of unlawful behaviour are identified: unconstitutional expansion of presidential power; interference in the work of the media and restrictions on Internet freedoms; attacks on democratic institutions; interference in the activities of representative authorities and political parties; interference in the activities of judicial institutions; and political repression.

The main **patterns of corruption** (Chapter 3) are: large-scale corruption during the privatisation process; widespread violations where state companies complete deals of a corrupt nature; the illegal take-over of business involving state-owned businesses or other businesses that are close to the government; patronage of businesses that are aligned with the authorities; bribery; money laundering; manipulation of financial markets; insider trading; and illegal tax refunds.

In Chapter 4, crimes perpetrated **during armed conflict** — in Georgia, in Ukraine, and in Syria — are discussed. Particular attention is afforded to the war in Chechnya. The authors propose how these can be classified under international and domestic Russian law.

In Chapter 5, other human rights violations that should be treated as targets of transitional justice are identified: **torture and abuse** by employees of law enforcement organs and in places of detention.

Chapter 6 provides an overview of measures taken in Russia to overcome the consequences of **the crimes of the totalitarian Communist regime**. The authors reach the conclusion that the majority of those guilty of even the most serious crimes of the Communist regime went unpunished and the state did not conduct an official public investigation into these crimes, leaving this task to public organisations and individuals. Among the measures of redress for victims of political repression in Russia, individual redress (in the form of rehabilitation) has been relatively effective and consistent. Although restitution and compensation have also been provided, they cannot be recognised as effective means of legal remedy because of significant exemptions (in the former case) and negligible amounts (in the latter case). Compensation for harm caused by the other crimes of the Communist regime — those that are not classified as political repression — is limited to isolated acts of collective redress. Lustration of employees of the Soviet security services, which was intended to protect the country from the recurrence of the crimes that they had committed, was not carried out, and their archives are still mostly closed to the public.

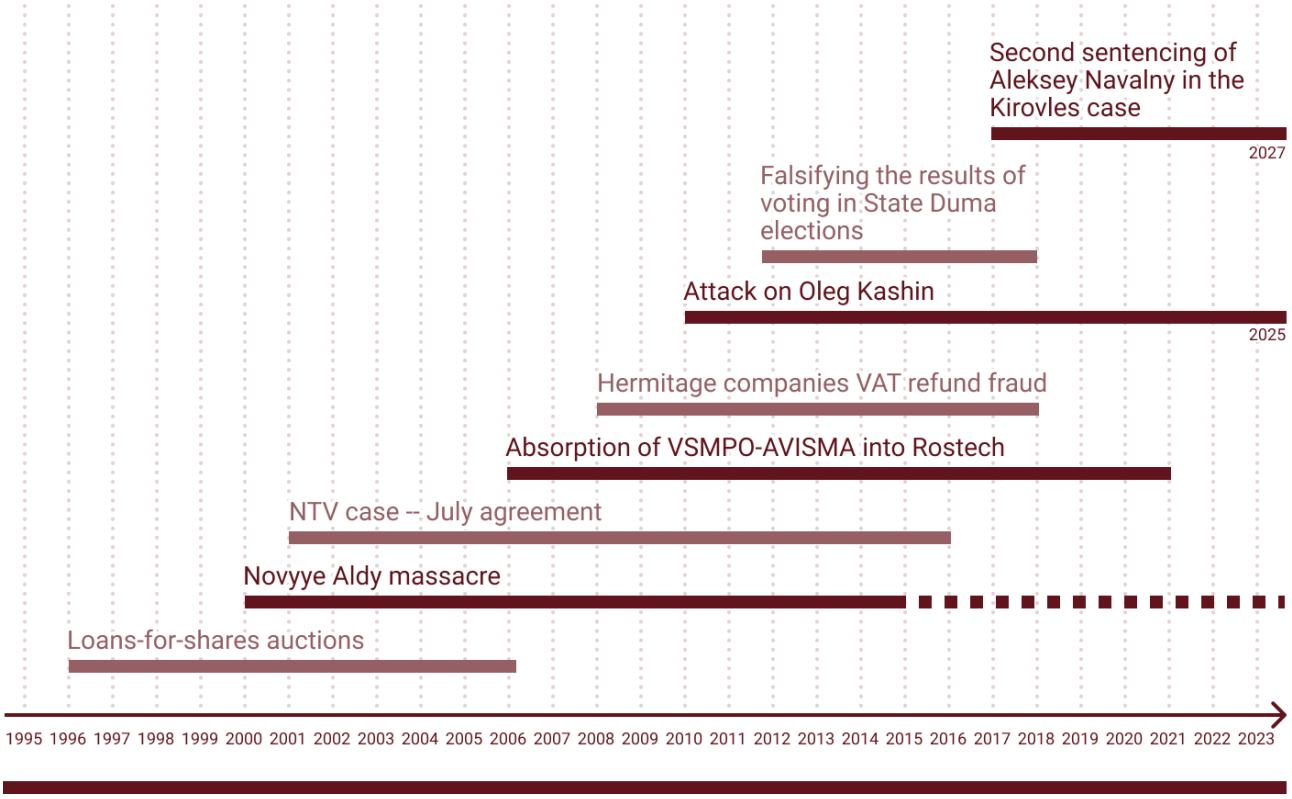
Chapter 7 analyses the **legal obstacles to overcoming systemic impunity**. These are understood as those legal institutions that "strengthen" the state of impunity for crimes: they do not allow those who violate the law to be held accountable; for harm caused by encroachments on the rights and freedoms of citizens to be compensated; or for the consequences of these encroachments to be corrected by other means. In normally functioning legal orders, they create a reasonable counterweight to the punitive function of the state or guarantee a balancing of the interests of parties in civil law disputes. However, in conditions where these institutions de facto serve the opposite purposes, the interests of overcoming systemic impunity, in the opinion of the authors, outweigh the mechanical application of checks and balances. In addition to obstacles in the strict sense of the word, it is proposed that we should also take into account those norms and procedures that, by themselves, do not preclude correcting the consequences of systemic impunity, but in the specific conditions of transitional justice may be too burdensome. Six groups of obstacles are identified.

1) Expiration of time limits as a result of lack of volition by authorised officials. These include a) the statute of limitations for criminal prosecution; b) prescriptive periods; c) prohibition of *reformatio in peius* when reviewing criminal judgments one year after they enter into force; d) time limits for appealing court decisions; e) the impossibility of reviewing judicial acts upon discovery of new facts that should, by law, be established by court judgement (such as crimes committed when the case was under review by people participating in the case, their representatives, or judges, as well as falsification of evidence and knowingly giving false testimony), if such a judgement cannot be rendered because of expired statutes of limitations for criminal prosecution, an amnesty, or the death of the accused; and f) procedural limitations for challenging election results — the limited number of complainants and a preclusive time limit for appealing to a court to have results annuled.

The influence of statutes of limitations on the persistence of impunity for several characteristic systemic crimes is illustrated in this graphic:

A timeline of statutes of limitations

Start and end times are rounded to the nearest year



2) Amnesty. Illustration from the report:

Manifestations of impunity in criminal law

Judicial impossibility (of holding to account)

- **The action is not criminalised**
- **The statute of limitations for criminal prosecution has expired**
- **The guilty party has not been stripped of immunity from criminal prosecution (chapter 52 of the Criminal Procedure Code)**
- **Amnesty**

De facto impossibility

- **The crime has not been discovered (natural latency)**
- **Groundless refusal to open a criminal case (artificial latency)**
- **The guilty party has not been identified or has absconded**
- **The prosecutor has groundlessly declined to bring charges**
- **Groundless acquittal or unjustly lenient sentence as a result of judicial error**
- **Miscarriage of justice**

3) Gaps in criminal law.

4) Protection of bona fide purchasers of another's property.

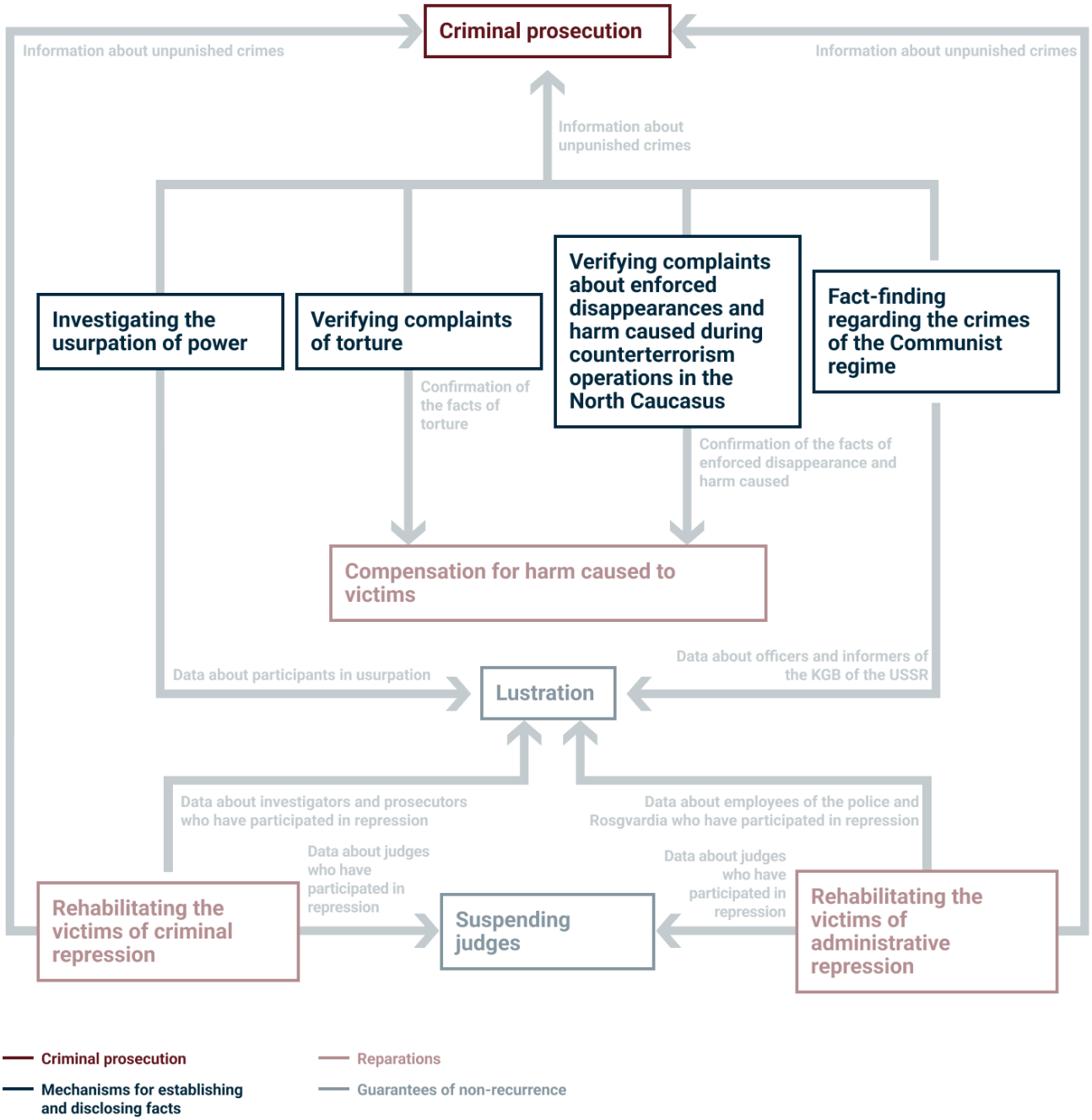
5) Legal obstacles to effective determination of the circumstances of systemic crime and compensation to its victims: a) the time needed to exercise victims' rights; b) the limited range of circumstances reflected in verdicts; c) the high standards of evidence and proof in criminal proceedings; d) the dependence of reparation prospects on the outcome of criminal prosecutions; e) unsustainable jurisprudence relating to compensation for moral damages resulting from unlawful actions of governmental officials; f) unsustainable jurisprudence relating to compensation for ineffective criminal investigations; and g) the absence of a mechanism of apology for crimes against human rights committed by public officials.

6) Deficiencies in procedures regulating restoration of the rights of persons unlawfully prosecuted for criminal and administrative offenses: a)limitations on review of criminal convictions that have entered into force; b) the absence of the right to rehabilitation when a crime is decriminalised; c) the absence of a mechanism for rehabilitation for persons unlawfully or unjustifiably prosecuted for administrative offences; d) incomplete compensation for damages caused by criminal and administrative sanctions and procedural coercion measures.

The most significant part of the concept is set out in Chapter 8: This describes in detail the **measures that are necessary to overcome systemic impunity**. Recommendations are divided into four blocks corresponding to the generally accepted components of transitional justice: the right to know; compensation for harm; criminal investigation; and guarantees of non-recurrence. In their recommendations, the authors distinguish between violations of the rights of citizens and infringements on the rights and interests of the state and the people that have not affected individuals. This distinction is based on the assumption that the state is able to protect its legitimate interests through general procedures; it is sufficient to remove legal obstacles to restoring justice and providing compensation. Individuals who are victims of unpunished violations, by contrast, may require special assistance in restoring their rights.

The distribution of the key measures for overcoming impunity according to the four components of transitional justice and the connections between them is illustrated by the graphic:

The relationships between the main transitional justice institutions



The blocks refer to the main transitional justice institutions described in that chapter (they should not be conflated with the transitional justice bodies discussed later in Chapter 9). The arrows show how the work of some transitional justice institutions can be used for the purposes of other institutions.

In order to protect the rights of victims and society to know about the circumstances of unpunished crimes, **extra-judicial fact-finding procedures** are suggested relating to: usurpation of power; torture and abuse; violence against civilians during armed conflicts in the North Caucasus; non-transparent interference in private lives during surveillance measures and investigations; and the crimes of the Communist regime in Russia.

A **commission for investigating usurpation** of power could be tasked with studying and revealing to society the ways in which state power in Russia was unlawfully appropriated or retained, as well as with preparing recommendations for guaranteeing the non-recurrence of usurpation. For the sake of obtaining such information about usurpation of power, rank-and-file accomplices could be offered a **conditional amnesty**. A person seeking exemption from liability under such an amnesty would be obliged to disclose to the commission the circumstances of the crime that they were aware of and, where necessary, to publicly present them to a session of the commission, as well as to expose their higher-ranking accomplices.

In order to alleviate the plight of victims of torture, a procedure separate from general criminal processes is proposed, within the framework of which the facts of harm to the complainant would be established and their right to compensation from the state treasury recognised. The presumption of state responsibility for violence, pain, and suffering experienced when a person was under the control of employees of law enforcement organs and penal institututions could be used as a criterion for compensation. This presumption could be overturned in the course of the investigation. An additional task for the **commission for compensating victims of torture** could be establishing the facts of ineffective investigation of complaints of torture, as well as preparing reports about the practice of torture, the policy of impunity and its promotion — in particular, among employees of law enforcement organs, with the aim of rooting out the "culture" of torture that exists among them.

The commission for compensating the victims of armed conflict in the North Caucasus should organise a list of the missing and dead, the search for burial sites, the identification of remains, and clarification of the circumstances of enforced disappearances and deaths. It should also review applications for compensation. By way of grounds for recognising a person as a victim, it is proposed that there is a presumption of responsibility on the part of the Russian Federation for any cases of harm to life and health and for cases of disappearances during counterterrorism operations on the territory where they are being carried out, unless it is proven that the harm is not connected to the actions of government forces.

The recommendations for establishing the facts regarding the unpunished crimes of the Communist regime are based on the programme drafted in 2011 by the Human Rights Council *Regarding Commemorating the Victims of the Totalitarian Regime and National Reconciliation*. In addition to the measures it outlines, the authors consider it necessary to launch a separate state-public initiative to prepare a generalised investigation into Communist crimes. The purpose of the investigation would be to establish, on behalf the state the scale, mechanism, and typology of crimes, identify the perpetrators, and illustrate the suffering of victims. It is proposed that a separate state institution -- the Institute of Public Memory -- is created. This would preserve and provide access to archival documents on the repressive structures of the Communist regime, as well as research Communist crimes and conduct lustration of Committee of State Security (KGB) officials.

The report envisages special mechanisms for restoring rights (reparations) to people who have been subjected to unconstitutional criminal and administrative repression, torture and abuse, and also to victims of violence during armed conflict in the North Caucasus and (in addition to existing measures) to the victims of political repression in the USSR.

A **simplified rehabilitation procedure** is proposed to restore the rights of citizens who have been unjustifiably prosecuted. It should be extended to cases of criminal prosecution on purely political grounds (with the goal of eliminating political opponents or in connection with an act that amounts to the peaceful exercise of constitutional rights to freedom of speech, assembly, and conscience) or on grounds of corruption. At the same time, irrespective of the actual circumstances, criminal convictions under the following Articles of the Criminal Code should be declared unconstitutional: Article 148 § 1 and § 2 ("insulting the feelings of religious believers"); Article 205.2 (in terms of justifying or promoting terrorism); Article 212.1 (repeated violations of established procedures for organising or holding public events); Article 284.1 (conducting activities on behalf of an undesirable organisation); Article 330.1 (malicious evasion of the duties imposed on organisations designated as foreign agents); Article 354.1 (public dissemination of deliberately false statements about the activities of the USSR during the Second World War and statements that demonstrate clear contempt to society regarding the military glory and memorable dates connected with the defence of the Fatherland). It is also proposed that criminal prosecution for extremism (Articles 280, 280.1, 282, 282.1, 282.2, 282.3 of the Criminal Code) be treated the same as unconstitutional political repression in circumstances where no calls for violence are involved.

Where the aforementioned grounds are present, sentences and other court decisions should be vacated, criminal investigations ceased, and procedural coercion measures declared illegal. Convicted persons and those who are subject to criminal prosecution or other procedural coercion measures shall be granted the right to rehabilitation. On the same grounds, decisions shall be annulled relating to designating terrorists and extremists and freezing bank accounts, securities, and property on the basis of the Federal Law "On Combatting the Legalisation (Laundering) of the Proceeds of Crime and the Financing of Terrorism." In order to speed up and simplify for applicants the rehabilitation procedure, it is advisable to merge it with the resolution of questions relating to review of repressive law enforcement acts, recognition of the rights to rehabiliation, compensation for material and moral harm, and the application of other restorative measures.

An analogous **rehabiliation mechanism** is proposed **for victims of unconstitutional administrative repression.** Regardless of the actual circumstances, those who have been held accountable under the following Articles of the Administrative Offences Code shall be eligible for rehabilitation: illegal missionary activity (Article 5.26 § 4); failure to provide information by a non-profit organisation performing the functions of a foreign agent (Article 19.7.5); violation of the operating procedures of a non-profit organisation performing the functions of a foreign agent (Article 19.34); dissemination on the Internet of information expressing open disrespect for society, the state, official state symbols, the Constitution of the Russian Federation or bodies exercising state authority in the Russian Federation (so-called "disrespect for authority" — Articles 20.1 § 3 and 4); violation of the established procedures for arranging or conducting a meeting, rally, demonstration, procession or picket (Article 20.2 as amended by Federal Law No. 65-FZ of 8 June 2012 and with

subsequent amendments, except for § 7); organising the mass simultaneous presence and/or movement of citizens in public places resulting in disturbance of public order (Article 20.2.2); propaganda of attributes or symbols of extremist organisations (Article 20.3, except for propaganda of Nazi attributes or symbols); operating an undesirable organisation (Article 20.23); producing and disseminating extremist materials (Article 20.29). In addition to the listed offences, a simplified procedure of annulment should be extended to administrative punishments for "non-political" violations, if the purpose was also to punish lawful behaviour. In resolving the issue of rehabilitation, the court shall cancel judgements made under "political" Articles of the Administrative Offences Code without verifying the actual circumstances (if the application concerns being held accountable under a "non-political" Article, such verification will be conducted), collect from the treasury compensation for fines and interest on those fines, compensate material damage, and compensate moral harm.

The programme for compensating the victims of torture and abuse, in the opinion of the authors, should comprise individual and collective measures. The former include compensation for damage to health; compensation for the loss of a breadwinner (if death was caused by torture); compensation for moral harm caused by torture (the commission for compensation shall award compensation on the basis of the nature of the physical and moral suffering, no lower than the sums usually awarded by the European Court of Human Rights for complaints about analogous violations under Article 3 of the European Convention); compensation for moral harm caused by ineffective investigation of complaints of torture; and official apologies for the failure to adopt measures to prevent and investigate torture.

Collective measures include medical care and rehabilitation, as well as educational work to eradicate societal tolerance of torture, the financing of films and other projects on this topic. The commission for compensating the victims of torture on behalf of the state shall apologise to people whose applications fall under the crieria for accepting responsibility for acts of violence.

Largely analogous measures are proposed **for the victims of illegal violence during armed conflicts in the North Caucasus**. In addition, the search for and identification of remains, as well as their transfer to relatives for reburial are highlighted as an independent form of redress. A special collective means of redressing the harm caused to the civilian population could be an official announcement by the highest state authorities. This would recognise the massive and egregious suffering of civilians during the conflict, and apologise for cases of disproportionate use of force by government forces and for the many years of impunity for abductions, torture, and murder.

To **rectify the consequences of the crimes of the Communist regime**, the following solution is proposed in addition to those already in existence:

- Expansion of the grounds for rehabilitating the victims of political repression; proactively rehabilitating the victims of administrative repression; introducing procedures for establishing the facts of repression in the absence of documentary evidence;
- Increasing the amount of lump-sum compensation for those rehabilitated; restoring monthly payments to the rehabilitated on the federal level and establishing a single amount with the possibility of indexation; introducing in-kind benefits in the field of medical care; introducing special means of support and increased compensation for those detained in camps and prisons;
- Launching a federal programme for erecting monuments dedicated to the victims of political repression; registering existing memorials and designating them as cultural heritage sites; establishing memorial status for sites of mass executions; burial of Lenin's body; adopting a law on toponymy, with a ban on commemorating those who a primarily responsible for mass repressions and other crimes against the rights and freedoms of citizens;
- Memorialising and rehabilitating those who have fought for Russia/s freedom;
- Restoring ownership of property nationalised by the Soviet authorities and still owned by public legal entities.

In addition to the listed special measures designed to restore the rights of victims of certain types of systemic crime, **several general measures** are proposed:

- Calculating the prescriptive period for claims of vindication and for compensation for losses from the moment that the violence or threat thereof, under the influence of which the plaintiff did not file a claim, ceases.
- The possibility of restoring missed deadlines for appealing judicial acts, if the omission was made under the influence of violence or threat thereof.
- Clarification of the grounds for reviewing judicial acts that have entered into force on the basis of newly discovered circumstances: facts that, according to current rules, can only be established by a court verdict could also be established by a court ruling or decision; a decision by an investigator or detective regarding the cessation of a criminal investigation beyond the expiration of the statute of limitations; the consequences of an amnesty or act of pardon; or in connection with the death of the suspect accused of perpetrating the crime.
- Granting transitional justice bodies the right to appeal against the results of elections even after the expiration of the three-month period for filing a suit.

In the domain of criminal prosecution, special provisions are proposed relating to the (non-)application of statues of limitations and amnesty acts to people who are shielded from criminal prosecution by the policy of systemic impunity. Furthermore, it is proposed that international legal norms about international crimes be implemented, as well as removing time limits for reviewing judicial decisions that have entered into force for criminal cases involving *reformatio in peius*.

The authors review in detail the conditions and limits of **extending and restoring statute of limitations for criminal liability**, and they propose different constructions of the relevant norm of the Criminal Code. In their opinion, it could be formulated according to the following template:

> The course of statutes of limitation for criminal prosecution of persons who committed crimes under Articles [numbers of the Articles] of this Code during the period from DD.MM.YYYY to DD.MM.YYYY [period of impunity] shall be considered suspended until the end of that period, if these persons have not been prosecuted for [reasons of impunity] [legal description of reasons of impunity].

For example:

> The course of statutes of limitation for criminal prosecution of persons who committed crimes in the period from 25 October (7 November) 1917 to 31 December 2021 shall be considered suspended until the end of that period, if these persons have not been prosecuted for political, corruption, or other reasons that are incompatible with the constitutional principal of the rule of law.

This norm should be made retroactive.

Similar exceptions are proposed for amnesty acts.

The authors of the report recommend updating the provisions of the Criminal Code regarding war crimes and establishing punishments for crimes against humanity.

It is also proposed that the preclusive term for *reformatio in peius* be abolished for judicial decisions that have entered into force in criminal cases on the basis of cassation submissions by transitional justice bodies.

Recommendations **in the area of guaranteeing non-recurrence** are confined to lustration and suspending judges who have been involved in unconstitutional repression.

Lustration is seen in the report as a means, firstly, of eradicating the culture of unlawful behaviour that is inherent to the personnel of those structures of the former regime that were involved in systematic human rights violations and unconstitutional retention of power. Secondly, it is seen as a means for employers to check applicants to vacant positions for evidence of past links to such structures. At the same time, lustration should not be a substitute for criminal justice.

The application of lustration is proposed according to the following criteria:

- Membership of structures responsible for the unlawful retention of power or systematic human rights violations;
- Personal participation in unconstitutional repressions;
- Membership of the leadership of bodies that tolerated the systematic violation of citizens' rights and the unlawful retention of power.

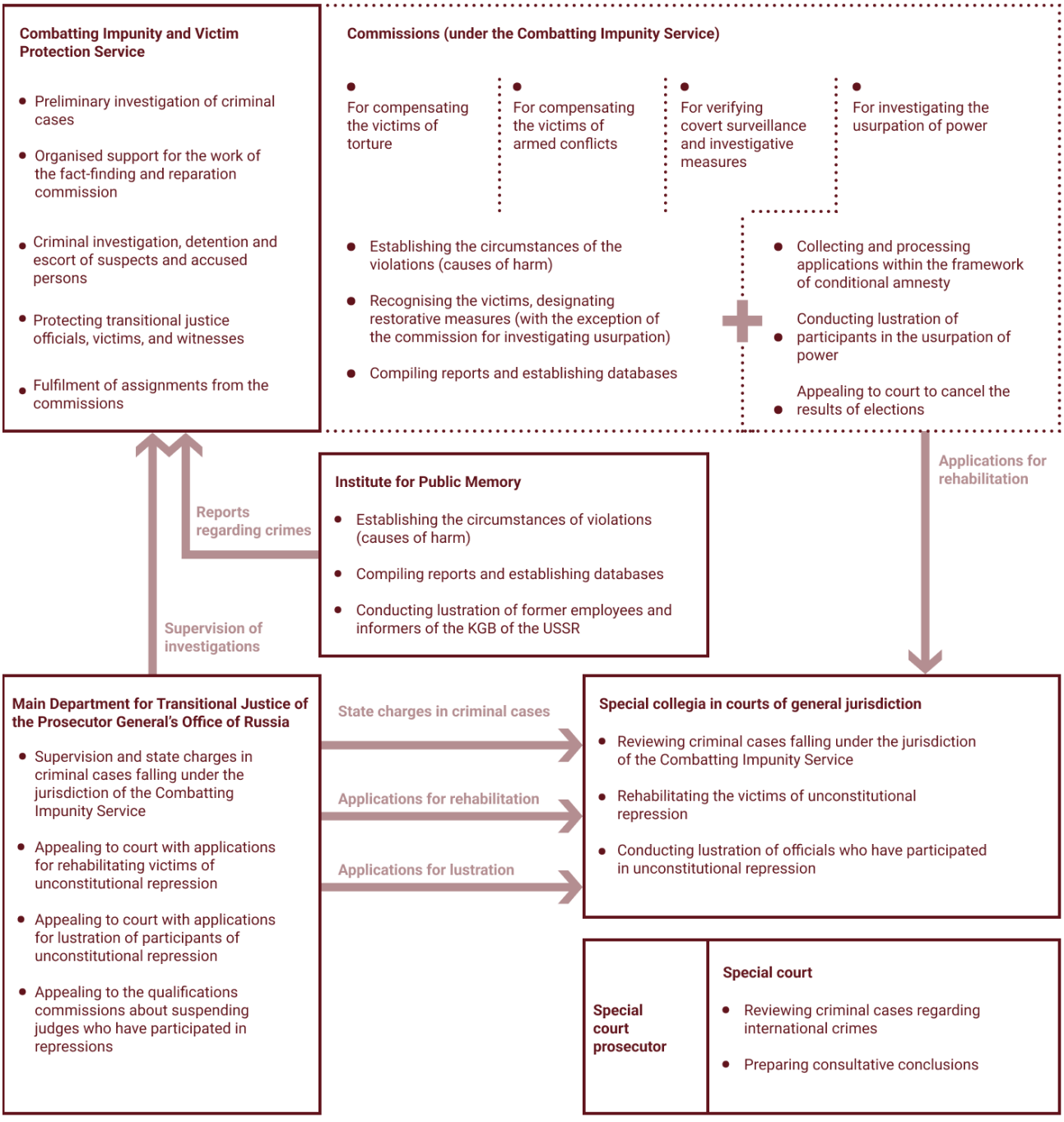
Persons falling under the lustration criteria could be deprived for a period of time of the ability to enter state service and to work in the leadership of state-owned companies. If a person does not aspire to occupy positions protected by lustration, then monitoring of them is limited to entering their data in an open lustration register. The objectives of lustration do not presume the unconditional need for strict prohibitions. Officials who have not occupied senior roles could be given a conditional ban, with mandatory monitoring of their future professional behaviour.

Lustration of persons who have participated in unconstitutional repression will be carried out on the basis of evidence in criminal cases and cases dealing with administrative violations, which has been used to make decisions about rehabilitation. The judge, in proceedings separate from rehabilitation, shall upon an application from a transitional justice body establish the facts of the official's participation in a criminal or administrative prosecution that has previously been recognised by them as an act of unconstitutional repression. They shall then apply a lustration ban to this person.

Since the constitutional principle of the irremovability of judges does not allow lustration to be applied to them, the report proposes as a preliminary measure **the suspension of judges who have issued verdicts in politically motivated criminal cases and "political" rulings about administrative violations**. Suspension is necessary in order to give transitional justice bodies time, firstly to vacate the judicial acts issued by such judges and, secondly, to collect and prepare material for filing against the judge a disciplinary complaint or criminal charge. If a complaint is not issued or a charge filed by the time the suspension expires, then the judge will return to their duties.

In Chapter 9 (the final chapter), the authors describe **options for structuring transitional justice bodies**. In this matter, the following principles are proposed:

The system of transitional justice bodies. Option 1



1. Transitional justice institutions should represent a unified system of state bodies with clearly defined and distributed functions, and their interaction should be coordinated.

2. No state body can effectively reform itself.

3. Tasks that are identical in substance and methods should not be assigned to different bodies within the system.

4. The investigation of human rights violations and rehabilitation of the victims of such violations should not be entrusted to the violators.

The last general principle gives rise to three more special principles:

a) no investigator or prosecutor who has participated in unconstitutional repressions can conduct an investigation or support the criminal prosecution of other persons who are suspected of serious human rights violations or abuse of authority;

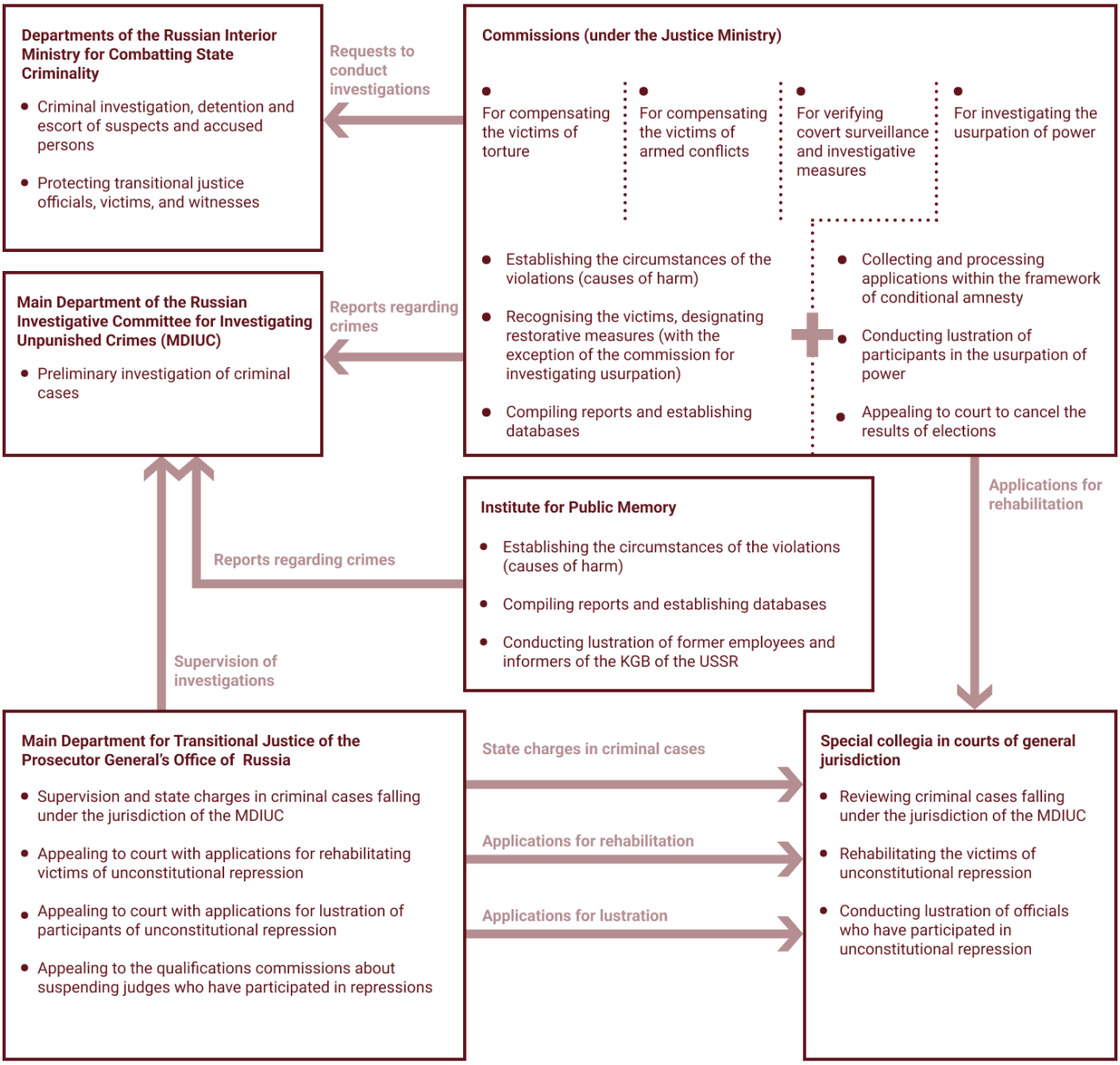
b) no judge involved in unconstitutional repressions can review the cases of victims of unconstitutional repression or pass sentence on other persons who are suspected of serious human rights violations or abuse of authority;

c) no institution that has previously been involved in serious human rights violations and abuse of authority can conduct an investigation or criminal prosecution in cases involving serious human rights violations and abuse of authority, until it has been reformed in such a way as to prevent principles 4(a) and 4(b) from being violated.

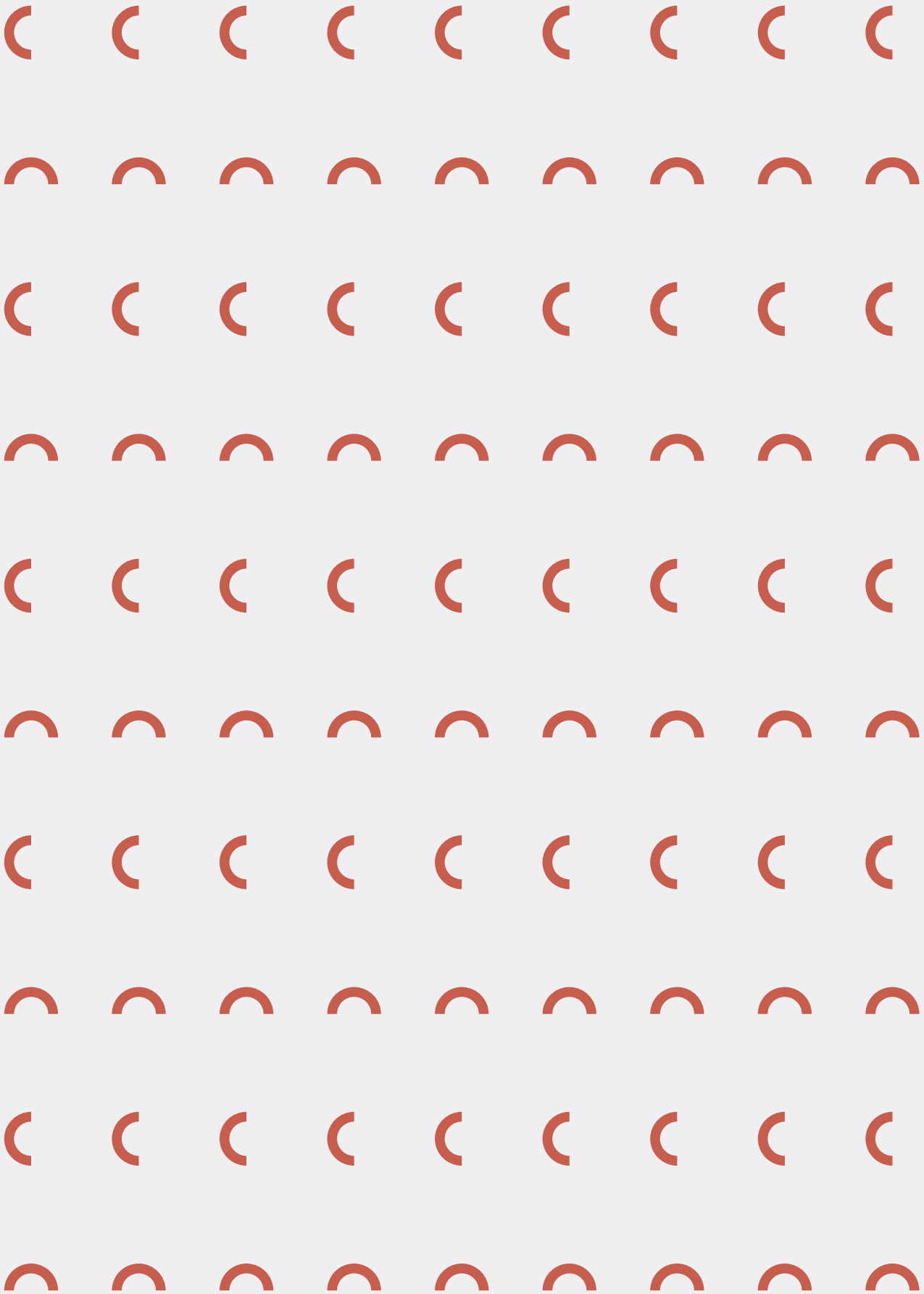
To realise these principles, a number of special bodies need to be created and existing ones modified. Institutional reform is a long and multi-stage process, and to postpone measures for overcoming impunity until it has been completed would be highly unjust. For this reason, the design of transitional justice bodies is presented as a largely ad hoc system. On the other hand, it is proposed that they are established within the structure of existing institutions of state power that need to be reformed: the courts, the prosecutor's office, the Investigative Committee, the Interior Ministry, and the Justice Ministry. It is proposed that, as well as fulfilling their own assigned duties, transitional justice bodies also exercise a positive influence on the reformed institutions and can serve as a positive example for their revitalisation. As a possible alternative to "embedding" transitional justice bodies in existing institutions of state power, the authors propose the creation of two new structures: a hybrid judicial body (the Special Court for the Prosecution of Persons Responsible for Gross Violations of Human Rights, International Humanitarian Law, and Grave Abuses of Power) and a federal agency for the detection and preliminary investigation of crimes related to areas of systemic impunity and for the operation of extrajudicial fact-finding and reparation mechanisms (the Combatting Impunity and Victim Protection Service).

The authors' proposals are illustrated in the graphics:

The system of transitional justice bodies. Option 2



In conclusion, the authors express their hope that the report will provoke debate, which could result in the dissemination of the underlying transitional justice ideas in the professional legal environment, clarification of the report's provisions, the popularisation of civilised methods for overcoming imputing, and refuting the false stereotypes that exist in this area.



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