

RUSSIAN FEDERATION

CAT A/45/44 (1990)

115. The Committee considered the initial report of the Union of Soviet Socialist Republics (CAT/C/5/Add.11) at its 28th and 29th meetings, on 15 November 1989 (CAT/C/SR.28 and 29).

116. The report was introduced by the representative of the State party, who explained that one of the main current trends in his country was the strengthening of the legal basis of public life and the improvement of the machinery for safeguarding the rights and interests of its citizens. Such legal reforms, as part of perestroika, included the updating of criminal law and criminal proceedings, correctional labour and administrative law, and measures to improve the functioning of law-enforcement bodies. The clearly defined goals of the reform were the supremacy of the law in all spheres of life in the State and the legal protection of the individual.

117. Legislation already in force provided for the non-admissibility of offences qualified as torture. Other such legal provisions were aimed at preventing the abuse of authority; in 1988, there had been 853 cases of beating, unlawful arrest, detention and unwarranted use of weapons, and more than 120 law-enforcement officials had been prosecuted for exceeding their authority or obtaining evidence from suspects by force. Greater emphasis was being placed on the training of such officials, and at present 93 per cent of prison officials had higher educational degrees.

118. Various draft laws on the prevention of crime and the treatment of prisoners had been actively developed and were under consideration by the Supreme Soviet. One such draft law envisaged an explicit ban on cruel or degrading treatment or punishment and would provide legal guarantees in that respect. At the same time, the legislation recognized the strict criminal responsibility of officials guilty of the offences defined in article 1 of the Convention, and penalties of up to 10 years' imprisonment could be imposed for exceeding official authority accompanied by violence or the use of weapons.

119. The text of the Convention had been published in the Foreign Ministry newsletter, Vestnik MID, and transmitted to all procurators responsible for supervising prison conditions. Questions relating to the implementation of the Convention had been covered by major newspapers.

120. The representative stated that the Soviet authorities would continue to examine the theoretical and practical aspects of the relevant international standards in order to implement the democratic and humane recommendations of the United Nations in the field of crime prevention and treatment of offenders.

121. The members of the Committee commended the Government of the USSR on its report and its representative on his oral presentation. They welcomed in particular the information concerning the debate on the proposed new criminal code. The report, although short, gave a great deal of information on the situation in the Soviet Union up to December 1988. They felt, however, that clarification on various points would enable them to obtain a clearer picture of the present situation and the effect of the proposed reforms for the future.

122. Members asked whether the Convention had the force of law, making it directly applicable by the competent authorities, and requested details on the legal mechanism for invoking it in the courts and on the number of times it had been so invoked. They asked for further information on the kind of offences listed in the various criminal codes, on the proposed amendments of the Code of Criminal Procedure, and on the regulations governing the maximum length, grounds and legal authority for pre-trial detention. Members wished to have an explanation of the procedure under which citizens could lodge complaints with State and public bodies and inquired whether, if the procurator failed to examine a complaint within three days, that fact would be taken into account if the complaint went to a higher court. They asked for clarification of the Soviet view on the possible abolition of capital punishment, on the maximum term for life imprisonment, and whether life imprisonment was not considered as inhumane treatment.

123. With specific reference to article 1 of the Convention, members inquired whether the USSR was party to an international agreement with provisions broader than those of the Convention.

124. With regard to article 2 of the Convention, members wished to know what precise law dealt with the inadmissibility of an order from a superior officer as a justification for torture. With reference to the special commission of the Politburo that was working to rehabilitate victims of repression of an earlier period, they wished to know what qualifications its members possessed, and why the Supreme Court was also involved in the work of the commission. It was also asked what measures had been taken to prevent violation of the law prohibiting the use of unauthorized methods in the investigation of offences.

125. In connection with article 3 of the Convention, members asked whether the USSR accepted the Convention as a legal basis for extradition to a State with which it did not have an extradition treaty, and whether the right of aliens to asylum would apply regardless whether a person was recognized as a refugee or not.

126. With regard to article 4 of the Convention, members sought clarification on the precise measures taken to remove law-enforcement officers who abused their authority, the results achieved so far and the sentences that had been imposed. They inquired whether the prosecution of 122 officials for exceeding their authority had been brought about as a result of complaints by individuals or by the action of the authorities. Further information was requested on the provisions that positively banned certain reprehensible acts, as mentioned in paragraphs 9 and 18 of the report.

127. With reference to article 6 of the Convention, members asked for information on the procedures for bringing a person to trial, and on the respective responsibilities of the procurator and the trial judge with regard to the rights of the accused. They wished to know whether letters sent to detainees were subject to examination, and whether the new laws on outside contacts for detainees would also apply to those detained against their will, as for example in psychiatric hospitals.

128. With reference to article 8 of the Convention, members wished to know what body was responsible for decisions on extradition or expulsion, and what were the major principles of the

extradition agreements which the USSR had concluded with foreign Powers, particularly on legal assistance.

129. With regard to article 10 of the Convention, members asked whether the research carried out by the Institute of the Procuracy of the USSR had been incorporated in training programmes for civil and military law-enforcement officers, and for medical personnel working with detainees. They asked for information on the instructions and statutes containing standards for the humane treatment of offenders. They requested information on the level of public awareness of human rights and safeguards against torture, the work being done to increase that awareness, and whether the Soviet people organized themselves to increase such protection of their interests. Information was sought on the situation with respect to the abuse of psychiatric medicine.

130. With reference to article 11 of the Convention, members asked for details of specific cases where physical restraints, such as handcuffs or straitjackets, were used, on how their use was monitored, and whether other restraints were permitted under the law. They wished to know whether solitary confinement was permitted in law, whether the measure was used in practice, and what was meant by the worsening of prison conditions as a punishment in accordance with the law, as mentioned in paragraph 31 of the report. Referring to the correctional labour legislation, they wished to know whether the rigorous labour camps, or “gulags”, had been abolished.

131. With regard to article 12 of the Convention, it was asked whether the allegations of torture made by 11 Armenians in Nagordny Karabakh had been investigated.

132. With reference to article 13 of the Convention, members requested further details on the right of appeal of those in custody, in pre-trial detention or psychiatric hospitals, whether there were systematic controls on such detention, and whether they were carried out by the institutions themselves or by an external authority.

133. In connection with article 14 of the Convention, members requested further information and statistics on the cases where compensation had been provided to victims of illegal prosecution and torture, and how often victims of ill-treatment sought compensation and the prosecution of offenders.

134. With reference to article 15 of the Convention, members wished to know whether legislation existed to prohibit the obtaining of statements by violent means other than “force or coercion”. They asked for information on any cases where verdicts had been quashed by the courts on the grounds that the evidence submitted had been obtained by force, threats or other illegal measures. It was inquired whether the regulations forbidding the obtaining of statements by force applied to the security police in the same way as to regular police officers, whether the security force was answerable to the courts and, if not, whether mechanisms existed to investigate allegations of torture by the security force.

135. Lastly, with reference to article 16 of the Convention, members requested an exact definition of cruel, inhuman or degrading behaviour and the nature of penalties for such offences.

136. In response to the questions raised by members of the Committee, the representative declared that the Soviet State had no difficulty in implementing its obligations under the Convention, since its provisions entirely coincided with Soviet legislation. Although the Convention could not be invoked in court, it could be referred to in the course of judicial proceedings by a judge or procurator if a crime came under the heading of torture as defined in the Convention. Torture was defined in the criminal codes of the Russian Federation and the Union Republics as the exceeding of authority or administrative power accompanied by acts of violence or torture or degrading acts, the punishment for which was 10 years' imprisonment. Draft legislation on criminal procedure was among the 30 draft laws and bills currently being examined by the legislature. That legislation had been discussed by the people of the country, and some of their comments were reflected in the final version of the draft to be considered in 1990. He explained that the normal length of pre-trial detention was two months, which could be extended to nine months by procurators of the districts, regions or republics and, exceptionally, to 24 months by the Procurator General; an extension beyond 24 months could be decided only by the Supreme Court. Unlawful extension of such detention was administratively punishable. The Supreme Soviet had recently adopted a law giving citizens the right to make complaints against public officials, and providing a maximum delay of 30 days for the consideration of such complaints. With regard to the death penalty, he stated that it had been repealed three times and then reintroduced. At the present time, opinions diverged on the question, with the public overwhelmingly in favour of its retention as an exceptional measure because of the growth of crime in the USSR. Its use had been strictly limited to serious crimes against the individual and the State and the number of such crimes had been reduced from 19 to 8. New legislation on the issue was currently being considered by the Supreme Soviet. He stated that differing views had also been expressed on the question of life imprisonment, which at one time had carried a maximum term of 25 years, but had not resulted in a reduction of serious crime.

137. Turning to the specific question on article 1 of the Convention, the representative stated that the Soviet Union was not a party to any agreement or convention with provisions stricter than those of the Convention.

138. In response to questions raised by members in connection with article 2 of the Convention, the representative stated that the gravity of the crime of torture meant that its perpetrators would be held criminally responsible, and penal legislation would include a provision stipulating that an order given by a superior should not be executed if it involved the commission of a crime. He explained that the special commission of the Politburo had been established in view of the extreme importance of the rehabilitation of the victims of mass repressions of the past. A number of legal experts participated in the work of the commission, which could not exercise judicial functions or take judicial decisions but could call the attention of the proper authorities to the possibilities of according compensation to victims of such repressive acts. A recent decree issued by the Ministry of the Interior provided guarantees for the protection of detainees against torture and other cruel, inhuman or degrading treatment. Another decree, promulgated in 1989, established minimum standards for conditions of detention which were in line with the Convention.

139. With reference to questions raised in connection with article 3 of the Convention, the representative declared that the Soviet Union would not return a person to a country if he or she risked becoming the victim of torture. His Government had not ratified the international

conventions on refugees, but in practice it complied with the norms of the international law and collaborated with the United Nations agencies concerned with refugees.

140. In response to questions raised in connection with article 4 of the Convention, the representative stated that, during the 1930s, 1940s and 1950s, gross violations had been committed by 3,400 former members and heads of the internal NKVD and the Ministry of State Security, who had been condemned and punished, some being executed. A further 2,370 staff members of those bodies had been punished, dismissed and deprived of pensions. The current law-investigatory bodies did not contain a single person who had been involved in the abuses of that period. He added that 122 persons had recently been brought to trial for abuse of authority and that 5,600 persons had been subjected to disciplinary action, including over 3,500 who had been dismissed from the internal service of the country.

141. In response to questions asked in connection with article 6 of the Convention, the representative said that the investigation of criminal matters normally could not continue for longer than two months, and could be extended only under special circumstances by the local procurator. Any official violating that process would be subject to disciplinary action. He explained that a procurator was obliged to institute court proceedings and carry out investigations, and a judge could institute criminal investigations only if a crime became known to him at any stage of the judicial investigation. He stated that detainees' correspondence could be examined, regardless of where they were held or at what stage of prosecution; that was done as a matter of security and was not considered an infringement of the rights of the detainees. Visits by relatives and close friends were permitted during preliminary detention with the agreement of the procurator investigating the case.

142. In reply to questions raised in connection with article 8 of the Convention, the representative indicated that decisions on extradition were the responsibility of the Presidium of the Supreme Soviet. Since the mid-1970s, the Soviet Union had concluded more than 20 treaties of extradition, including legal assistance, with different States.

143. With regard to the questions raised in connection with article 10 of the Convention, he stated that the research institute of the Procuracy of the USSR was designed to ensure a scientific basis for law-enforcement bodies; it worked on theoretical problems of law and order and the preparation of new texts on criminal proceedings and procedural laws. Most of the State's laws had been prepared by the institute. The training of professionals in the judicial and penitential systems was conducted in establishments of higher education and in universities, and at the middle level in specialized institutes and educational establishments. He indicated that public awareness in the field of human rights had increased so much in recent times that in December 1989 the authorities would be issuing 2,000,000 copies of a compendium of all existing international instruments covering human rights. He added that one of Moscow's daily newspapers, with a circulation of more than 7,000,000, had recently published responses made to a series of questions posed by journalists on the Convention and on the Committee against Torture. There were hundreds of non-governmental organizations in the country concerned with human rights questions in all spheres of life. Anyone wishing to do so could form an association, print publications and hold meetings; there were no statistics on such associations because of their

informal nature. The representative stated that, as of 1988, all psychiatric institutions, formerly run by the Ministry of Internal Affairs, had been placed under the jurisdiction of the Ministry of Health.

He added that earlier in the year the USSR had been readmitted to the World Psychiatric Assembly, and that psychiatric institutions in the country had been visited by a group of American psychiatrists.

144. With reference to questions raised under article 11 of the Convention on physical restraints, the representative stated that handcuffs were used to prevent unruly behaviour or physical attacks by detainees, and that their use was controlled by the supervisory officer in the place of detention.

Straitjackets were used as an extreme measure to quieten unruly behaviour when other measures were impossible, only in special areas designed for that purpose. The representative stated that he knew of no single incident of their use during the previous 10 years and that this type of restraint was the subject of criminal legislation currently in preparation, which would ban their use. Clubs were used to quell disturbances by detainees when there was a direct threat to the life and health of persons working in the places of detention, and their use was regulated by special decree. Every incident where any type of physical restraint was used had to be reported to the local procurator, and unlawful use of such restraints was subject to disciplinary action. Solitary confinement was used as a disciplinary, not a correctional measure, and then only in the strict régime colonies and not in any other circumstances; the maximum period for such confinement was one year. The strict observance of the laws for the control of and conditions within places of detention was regulated by the code of laws on correctional labour. Prison officers responsible for monitoring places of detention regularly inspected such institutions and took measures to eliminate any irregularities. The representative further explained that the correctional labour camps of the 1930s had been established by the People's Commissars and controlled by the internal security agency (SPU). Such camps had ceased to exist in 1956, when the principle of rehabilitation had been established and an amnesty granted. The correctional labour facilities existing in the USSR today were entirely different from the old-style camps in structure and in their treatment of and conditions for detainees.

145. With regard to the question raised under article 12 of the Convention, the representative explained that a state of emergency had been declared in the region of the Nargordny Karabakh because of the seriousness of the situation; that had been in line with the International Covenant on Civil and Political Rights, from which no derogations had been made. Those arrested had been released after investigation.

146. With reference to the questions raised in connection with article 14 of the Convention, the representative declared that articles 129, 136 and 137 of the Criminal Procedure Code of the Russian Federation, and similar provisions in the Republics, covered compensation for damage resulting from the unlawful activities of State officials. Moral damage was fully compensated by the State, regardless of the guilt of the person involved. Compensation was generally not paid for non-material damage, but psychological health was taken into account and the State would do all it could to eliminate adverse effects through a rehabilitation process carried out by free medical assistance.

147. With reference to the questions asked under article 15 of the Convention, the representative

stated that the security forces, under the Committee for State Security, had a need for confidentiality, but that there was no secret police, as such, in the USSR.

148. In concluding consideration of the report, the members of the Committee thanked the representative of the USSR for the detailed information provided, which revealed that the Government of the USSR was taking seriously its obligations under the Convention. They were impressed by the magnitude of the reforms under way in the country, especially in the penal procedures. While acknowledging that the results of such reforms might not be apparent for some time, they requested the delegation to supply, in its second periodic report, as many concrete examples of the results of the reforms as possible, and particularly of the results of trials of persons involved in the abuse of power. They noted also that, although many thousands of persons had been punished for such abuse of power, the numbers involved implied that there was still some irregularity within the system. Furthermore, they expressed concern about the use of solitary confinement, which seemed particularly severe, and also about the ban on detainees' correspondence.

149. The representative assured the members of the Committee that all the questions and comments made during the meeting would be taken into account during the preparation of the second periodic report, particularly the questions on solitary confinement, which was an issue which would be considered very seriously in the country's move towards a more open system of democracy.

CAT A/52/44 (1997)

31. The Committee considered the second periodic report of the Russian Federation (CAT/C/17/Add.15) at its 264th, 265th and 268th meetings, held on 12 and 14 November 1996 (see CAT/C/SR.264, 265 and 268), and adopted the following conclusions and recommendations.

1. Introduction

32. The second periodic report of the Russian Federation was not submitted on time, a fact that may be attributed to the transition that the country is undergoing. The report conforms, on the whole, to the guidelines adopted by the Committee for the submission of State reports.

33. The Committee expresses its appreciation to the representatives of the Russian Federation for their presentation of the report and especially for the effort made to answer almost all of the many questions raised by the Rapporteur, the Co-Rapporteur and the members of the Committee.

2. Positive aspects

34. The Constitution of the Russian Federation safeguards human rights in a comprehensive way, including the right to personal safety and bodily integrity.

35. The Constitution prohibits torture and every form of degrading treatment of the individual.

36. The introduction of a new criminal code is welcomed, particularly in view of the criminalization of a series of acts the commission of which by law enforcement agents would constitute torture.

37. The setting up of the Presidential Commission on Human Rights and the establishment of an ombudsman for human rights are, without doubt, steps in the right direction. The positive aspects of the creation of those offices will be further enhanced if their powers to monitor the application of the Convention and deal with abuses are comprehensively defined.

38. The withdrawal of the reservation to article 20 and the declarations of acceptance of the procedures under articles 21 and 22 of the Convention are welcomed.

39. The allocation of additional resources for the improvement of prison conditions, as referred to by the delegation, is a step forward.

40. The will to reform State institutions, albeit with difficulty, in order to bring them into conformity with the provisions of the Constitution and fundamental human rights norms is duly noted.

3. Factors and difficulties impeding the application of the provisions of the Convention

41. The Committee acknowledges the existence of the following difficulties:

(a) The break with the past left an institutional vacuum that is proving difficult to fill. The State apparatus, as experience teaches, is resistant to change;

(b) The reorientation of State institutions and machinery is a difficult process. However, awareness of the obstacles to this process should lead those in authority to redouble the efforts to overcome them;

(c) The absence of properly trained personnel in sufficient numbers to make possible a swift change to the legal framework and the manner of running the State which is envisaged by the Constitution;

(d) The vastness of the country and diffusion of authority between central and regional authorities places additional difficulties in the way of establishing the new order;

(e) The lack of adequate resources to address the problems that are being encountered in the change from the old to the new legal order; the allocation of the necessary resources for the reform of legal practices should be seen as a priority.

4. Subjects of concern

42. The Committee is concerned about the following:

(a) The failure to create a specific crime of torture in the domestic law, as required by article 4 of the Convention;

(b) Presidential Decrees Nos. 1815 of 2 November 1993, 1226 of 14 June 1994 and 1025 of 10 July 1996, which allow the detention of suspects incommunicado for up to 9 days in one case and 30 days in the other cases, leave the door open to the abuse of the rights of detainees;

(c) Widespread allegations of torture and ill-treatment of suspects and persons in custody with a view to securing confessions, general allegations of ill-treatment of detainees and the absence of effective machinery to address such complaints promptly;

(d) The fact that, according to the materials presented to the Committee, young soldiers in the Russian army were brutalized by older soldiers without the authorities taking appropriate remedial measures;

(e) The failure to establish effective machinery for the prompt examination of prisoners' complaints about ill-treatment and conditions in prisons;

(f) The slow rate of harmonizing domestic legislation with the Constitution and with norms concerning human rights. The disharmony leaves a gap between the legal order respecting human rights established under the Constitution and the application of the law;

- (g) Overcrowding in prisons, made all the worse by the poor and insanitary conditions prevailing in them;
- (h) Lack of proper training of police and prison personnel and the personnel of agencies engaged in law enforcement with regard to the rights of suspects and prisoners and their duties under the law;
- (i) Lack of appropriate measures to give comprehensive effect to the provisions of article 3 of the Convention and to ensure its applicability in all relevant circumstances, including in relation to extradition;
- (j) Absence of extraterritorial jurisdiction makes difficult or impossible the implementation of article 5, paragraph 1 (b), of the Convention;
- (k) Reported widespread abuses of human rights in the conflict in Chechnya, including acts of torture, and the apparent failure to check such abuses and address them speedily and effectively.

5. Recommendations

43. The Committee recommends that the State party:

- (a) Make torture as defined in the Convention a distinct crime, with sufficiently severe punishment to reflect the gravity of the offence;
- (b) Expedite the process of training the personnel, including the medical personnel, of all agencies involved in law enforcement and the detention of prisoners as to their powers and duties under the law;
- (c) Adopt programmes to inform detainees and the public of their rights and the means available under the law to protect them;
- (d) Establish effective machinery to monitor the conditions under which investigations of crimes are conducted, the conditions under which persons are held in custody and conditions in prisons;
- (e) Establish an appropriate process for the prompt investigation of complaints of suspects, detainees and prisoners and the prosecution of the offenders;
- (f) Radically improve conditions in prisons, including space, facilities, food and sanitation;
- (g) Abolish acts, rules and regulations allowing remand in custody for longer than 48 hours without judicial authorization, and those limiting access to legal assistance. Unimpeded access to counsel should be safeguarded at all times;
- (h) Establish an independent Committee to investigate allegations of torture and inhuman and degrading treatment committed by the military forces of the Russian Federation and Chechen separatists, with a view to bringing to justice those against whom there is evidence tending to

establish their involvement or complicity in such acts.

CAT A/57/44 (2002)

87. The Committee considered the third periodic report of the Russian Federation (CAT/C/34/Add.15) at its 520th, 523rd and 526th meetings, held on 13, 14 and 16 May 2002 (CAT/C/SR.520, 523 and 526), and adopted the following conclusions and recommendations.

A. Introduction

88. The Committee welcomes the third periodic report of the Russian Federation, which was submitted with a delay. The report responds directly to some of the concerns and recommendations expressed by the Committee in its conclusions adopted in 1996. The Committee regrets that despite the State party's assurances that it would promptly provide the Committee with additional information requested in the review, such materials have not been received. The Committee appreciates the updated and detailed information as well as the extensive responses provided by the representatives of the State party in the oral update and reply. The Committee notes, however, that, because of a lack of time, many of the questions asked by the Committee in the review of the third periodic report remained unanswered.

B. Positive aspects

89. The Committee notes the following positive developments:

(a) The ratification of the European Convention for the Protection of Human Rights and Fundamental Freedoms and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment;

(b) The introduction of a new Criminal Code and a new Code of Criminal Procedure, as well as the State party's assurances that all of the latter Code will enter into force on 1 July 2002. The Committee welcomes the introduction in the Code of Criminal Procedure, inter alia, jury trials, stricter limits on detention and interrogation, provisions for exclusion of evidence obtained in the absence of a defence lawyer, and the conferral authority of a judge rather than a procurator to order an arrest.

(c) Transfer of the penal correction system from the authority of the Ministry of Internal Affairs to the authority of the Ministry of Justice;

(d) Measures introduced to improve conditions of detention in prisons and to reduce overcrowding;

(e) Assurances by the representative of the State party that alternative service, and a "voluntary military on a contract basis" would be introduced to replace mandatory conscription into the armed forces;

(f) The Procurator General's Order No. 46, which requires the presence of representatives of

the Prosecutor's Office during "special operations" carried out in Chechnya, and Order No. 80 of the Commander of the Federal Forces of the North Caucasus, requiring troops to identify themselves, record detentions, notify relatives, and take other measures to safeguard civilians from abuse;

(g) The setting up of a special working group within the Ministry of Internal Affairs with a mandate to bring national legislation into conformity with international refugee law.

C. Factors and difficulties

90. The Committee appreciates the frank explanations provided by the delegation regarding the difficulties still faced by the State party in overcoming the inheritance of a system characterized by "arbitrariness and impunity" and in building and strengthening democratic institutions and the rule of law. It notes that these challenges are compounded by "acts of terrorism" and threats to security. Nonetheless, the Committee reiterates that, in accordance with article 2 of the Convention, "no exceptional circumstance whatsoever ... may be invoked as a justification of torture".

D. Subjects of concern

91. The Committee is deeply concerned over the following:

(a) Numerous and consistent allegations of widespread torture and other cruel, inhuman or degrading treatment or punishment of detainees committed by law enforcement personnel, commonly with a view to obtaining confessions;

(b) Continuing reports, despite the State party's considerable efforts to initiate dialogue and preventive safeguards such as a "hotline" for victims, of widespread "hazing" (dedovshchina) in the military, as well as torture and other cruel, inhuman or degrading treatment or punishment in the armed forces, conducted by or with the consent or approval of officers, resulting in severe physical and mental harm to the victims;

(c) A persistent pattern of impunity for torture and other ill-treatment benefiting both civil and military officials, a lack of reported decisions by judges to dismiss or return a case for further investigation citing the use of torture to obtain a confession, and the very small number of persons convicted of violations of the Convention.

92. The Committee also expresses its concern about the following:

(a) The failure to define torture in domestic law in conformity with article 1 of the Convention. The designation of torture as an aggravating circumstance for some enumerated crimes does not satisfy the requirements of articles 1 and 4 of the Convention;

(b) The numerous cases of convictions based on confessions and the law enforcement promotion system based on the percentage of crimes solved, which, taken together, reportedly create conditions that promote the use of torture and ill-treatment to force detainees to "confess";

- (c) The lack of adequate access for persons deprived of liberty, immediately after they are apprehended, to counsel, doctor and family members, an all-important safeguard against torture;
- (d) The de facto refusal of judges to take account of evidence of torture and ill-treatment provided by the accused, resulting in the common to either investigate or prosecute such cases;
- (e) The explanation by the State party that, despite numerous allegations of violence against women in custody, no formal complaint has been received on this issue. Despite the State party's efforts to release prisoners and reduce their number in general, the population of women in custody has doubled in the past decade;
- (f) The lack of practical training about obligations under the Convention for doctors, law enforcement personnel and judges, and the military;
- (g) Distressing conditions of pre-trial detention, including the prevalence of tuberculosis and other diseases, as well as the poor and unsupervised conditions of detention in IVS (temporary police detention), and SIZOs (pre-trial establishment) facilities, including the practice of placing metal shutters in front of cell windows, preventing natural light and ventilation in the cells, reportedly because, by law, inmates are prohibited from communicating with one another;
- (h) The insufficient level of independence and effectiveness of the Procuracy, due, as recognized by the State party, to the problems posed by the dual responsibility of the Procuracy for prosecution and oversight of the proper conduct of investigations;
- (i) Reports of conditions amounting to inhuman or degrading treatment, of children in institutions or places of detention;
- (j) A lack of safeguards to ensure that persons are not returned to countries where they face a real risk of torture (non-refoulement).

93. The Committee is particularly concerned over the following: in connection with the events in Chechnya:

- (a) Numerous, ongoing reports of severe violations of human rights and the Convention, including arbitrary detention, torture and ill-treatment, including forced confessions, extrajudicial killings, and forced disappearances, particularly during "special operations" or "sweeps", and the creation of illegal temporary detention centres, including "filtration camps". Allegations of brutal sexual violence are unusually common. Additionally, armed units which are reported to be very brutal towards civilians have been sent again into the conflict area;
- (b) Numerous armed units and forces operating under the authority of various departments and services in Chechnya, which hinder the identification of the personnel responsible for the reported abusive actions cited above;

(c) A lack of effective implementation of Orders Nos. 46 and 80, as referred to above among the positive aspects;

(d) The dual system of jurisdiction in Chechnya involving both military and civilian prosecutors and courts, which leads to long and unacceptable delays in registering cases, resulting in a cyclical process whereby case information and the responsibility for opening investigations continue to be passed from one official to another and back, without resulting in the initiation of prosecutions. The Committee notes with concern that it is impossible for the civil prosecutor to question military personnel and carry out investigations at military sites in order to collect the evidence required to oblige the military prosecutor's office to take up the case. Also of concern is the insufficient independence of military courts, prosecutors and judges, with the result that few cases are registered to prosecute officials alleged to be responsible for the abuses.

E. Recommendations

94. The Committee recommends that the State party:

(a) Promptly incorporate into domestic law the definition of torture as contained in article 1 of the Convention and characterize torture and other cruel, inhuman and degrading treatment as specific crimes with appropriate penalties in domestic law;

(b) Adopt measures to permit detainees access to a lawyer, doctor, and family members from the time they are taken into custody; inform suspects and witnesses of their rights at the beginning of detention; and ensure that legal assistance and a doctor will be provided at the request of detained persons rather than solely when permitted by officials. Urgent consideration should be given to making a medical examination compulsory for persons when they enter IVS and SIZOs, and to the establishment of a health service independent from the Ministries of Internal Affairs and Justice to conduct such examinations;

(c) Ensure in practice absolute respect for the principle of the inadmissibility of evidence obtained by torture and review cases of convictions based solely on confessions, recognizing that many of them may have been obtained through torture or ill-treatment, and, as appropriate, provide compensation to and release persons presenting credible evidence of having been tortured or ill-treated;

(d) Improve conditions in prisons and pre-trial detention centres so that they are in conformity with the requirements of the Convention. The State party should ensure, in particular, that the prohibition of communication between inmates in pre-trial detention is not imposed on all inmates without distinction, but limited to identified inmates, when necessary and on the basis of a court decision setting a time limit for such conditions of detention;

(e) Establish a programme of unannounced inspections of pre-trial detention centres and other places of confinement, by credible impartial investigators, whose findings should be made public;

(f) Consider the creation of an independent body to inspect prisons, monitor all forms of

violence in custody, including sexual violence against both men and women, and all forms of inter-prisoner violence, including proxy violence with the acquiescence of officials. The participation of public defenders in the investigation stage following detention would offer a safeguard for detainees;

(g) Ensure training about obligations under the Convention for (i) doctors to detect signs of torture or ill-treatment of persons who have been or are in custody, (ii) law enforcement personnel and judges to initiate prompt and impartial investigations, and (iii) military personnel to be aware of the prohibition of torture and that an order from a superior officer may not be invoked as a justification of torture;

(h) Request the Supreme Court to analyse the existing practices of the admissibility of cases of torture in the courts, in light of the definition of torture provided in article 1 of the Convention, and consider issuing guidelines on this matter;

(i) Ensure prompt, impartial and full investigations into the many allegations of torture reported to the authorities and the prosecution and punishment, as appropriate, of perpetrators, as well as the protection of persons who complain of torture and their witnesses from retaliation;

(j) Distribute and ensure implementation of appropriate instructions to all relevant officials on the prohibition of ill-treatment and acts of torture against children in institutions and prisons under the jurisdiction of the State;

(k) Ensure that no person is expelled, returned or extradited to a country where there are substantial grounds for believing that he/she would be in danger of being subjected to torture.

95. With regard to the situation in Chechnya, the Committee also recommends that the State party:

(a) Clarify the jurisdiction over the events in Chechnya, which currently have an uncertain status, as there is no state of exception and there is also a non-international armed conflict in progress. Such clarification could provide individuals with an effective means of seeking redress for any violations committed, so they will not be caught in a vicious circle of various military and civilian departments and agencies with differing degrees of responsibility;

(b) While a number of mechanisms have been put in place in Chechnya in connection with allegations of human rights violations, none has possessed the attributes associated with an independent impartial investigating body. Accordingly, the Committee reiterates its 1996 conclusion calling upon the Government of the State party to establish a credible impartial and "independent committee to investigate allegations of breaches of the Convention by the military forces of the Russian Federation and Chechen separatists, with a view to bringing to justice those against whom there is evidence that establishes their involvement or complicity in such acts" (A/52/44, para. 43 (h));

(c) Ensure the effective implementation of Orders Nos. 46 and 80 and elaborate

comprehensive guidelines on the conduct of sweep operations;

(d) Strengthen the powers of the Special Representative of the President for human and civil rights and freedoms in Chechnya to conduct investigations and make recommendations to the prosecutor as to possible criminal cases;

(e) Take steps to ensure civilian control over the army and ensure, in practice, that hazing, torture and ill-treatment are prohibited in the military, among conscripts and officers;

(f) Consider the formation of a joint investigative group of both military and civilian procuracy officials until specific responsibility can be identified and jurisdiction can be established.

96. The Committee further recommends that the State party:

(a) Provide requested data to the Committee, including information disaggregated, inter alia, by age, gender, ethnicity and geography, on civil, military and other places of detention as well as on juvenile detention centres and other relevant institutions; and provide information in the next periodic report regarding the number, types and results of cases of punishment of police and other law enforcement personnel for torture and related offences, including those rejected by the court;

(b) Widely disseminate the conclusions and recommendations of the Committee and the summary records of the review, in appropriate languages, in the country; and consider consulting with independent human rights, civil liberties and legal aid organizations and public defenders groups in the preparation of the next report.