



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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COMMITTEE AGAINST TORTURE
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**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION**

Conclusions and recommendations of the Committee against Torture

RUSSIAN FEDERATION

1. The Committee against Torture considered the fourth periodic report of the Russian Federation (CAT/C/55/Add.11) at its 732nd, 733rd and 735th meetings, held on 10 and 13 November 2006 (CAT/C/SR.732, 733 and 735), and adopted, at its 751st meeting on 23 November 2006 (CAT/C/SR.751), the following conclusions and recommendations.

A. Introduction

2. The Committee welcomes the fourth periodic report of the Russian Federation and the lengthy written responses it provided to the list of issues (CAT/C/RUS/Q/4/Add.1). While the Committee welcomes the dialogue held with the delegation, it regrets the absence of a representative from the General Prosecutor's Office. It appreciates the additional oral and written information provided by the representatives of the State party.

B. Positive aspects

3. The Committee welcomes the following positive developments:

(a) The entry into force between 1 July 2002 and 1 January 2004 of the new Code of Criminal Procedure adopted in December 2001, which, *inter alia*, introduces jury trials, stricter limits on detention and interrogation, provisions for exclusion of evidence obtained in absence of a defence lawyer, and authorizes a judge rather than a procurator to order an arrest, as well as limiting to 48 hours the time a criminal suspect can be held in detention;

(b) Entry into force on 1 July 2002 of the new Code of Administrative Offences, under which decisions and acts or omissions that degrade human dignity which occur while applying measures of administrative coercion are inadmissible;

(c) The adoption on 25 August 2003 of Decision No. 523, approving a new federal programme that provides for staffing in parts of the armed forces by contract, thus reducing the number of conscripts;

(d) The adoption in August 2004 of the federal law on the state of protection of victims, witnesses and other participants in criminal proceedings, which provides for a system of government protection for crime victims, witnesses and other people involved in criminal proceedings and their relatives;

(e) The ratification in 2004 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.

4. The Committee further welcomes the numerous administrative and other measures taken, including in consultation with the Council of Europe, to upgrade the conditions of detention and the State party's commitment to continuing these efforts, and notes in particular:

(a) The Order No. 205 of 2 August 2005 of the Ministry of Justice establishing minimum food rations for suspects, accused and convicted persons;

(b) The substantial measures taken by the State party to reduce overcrowding in places of detention and the adoption in September 2006 of the Strategic framework for the development of the penitentiary system.

C. Subjects of concern and recommendations

5. The Committee's concerns and recommendations are presented below in paragraphs 7 to 23 and address matters throughout the territory of the State party; paragraph 24 specifically addresses the situation in the Chechen Republic, as in the Committee's previous recommendations.

6. The Committee is concerned about the areas set out below.

Definition

7. While noting the State party's assertion that all acts that may be described as "torture" within the meaning of article 1 of the Convention are punishable in the Russian Federation, the definition of the term "torture" as contained in the annotation to article 117 of the Criminal Code does not fully reflect all elements of the definition in article 1 of the Convention which includes the involvement of a public official or other person acting in an official capacity in inflicting, instigating, consenting to or acquiescing to torture. The definition, moreover, does not address acts aimed at coercing a third person as torture.

The State party should take measures to bring its definition of torture into full conformity with article 1 of the Convention, in particular to ensure that police, army, as well as prosecutorial officials, can be prosecuted under article 302 as well as under article 117 of the Criminal Code.

Safeguards for detainees

8. Laws and practices that obstruct access to lawyers and relatives of suspects and accused persons, thus providing insufficient safeguards for detainees, include:

(a) Internal regulations of temporary facilities i.e. IVS (temporary police detention) and SIZOs (pre-trial establishments), failures of the courts to order investigations into allegations that evidence has been obtained through torture, as well as reported reprisals against defence lawyers alleging that their client has been tortured or otherwise ill-treated, and which appear to facilitate torture and ill-treatment;

(b) The possibility of restricting access to relatives of suspects in the interest of the secrecy of the investigations provided for in article 96 of the Code of Criminal Procedure;

(c) The Law on Operative-Search Activity, as well as the federal Law No. 18-FZ of 22 April 2004, amending article 99 of the Code of Criminal Procedure, according to which suspects of "terrorism" may be detained for up to 30 days without being charged;

(d) The reported practice of detention of criminal suspects on administrative charges, under which detainees are deprived of procedural guarantees.

The State party should ensure the implementation in practice of the right to access a lawyer and other guarantees of protection from torture starting from the moment of actual deprivation of liberty at the request of the detainee and not solely at the request of a public official.

The State party should ensure that criminal suspects are afforded their rights and procedural guarantees so that they are not arbitrarily detained on administrative charges.

Widespread use of torture

9. The Committee is concerned at:

(a) The particularly numerous, ongoing and consistent allegations of acts of torture and other cruel, inhuman or degrading treatment or punishment committed by law enforcement personnel, including in police custody;

(b) The law enforcement promotion system based on the number of crimes solved, which appears to create conditions that promote the use of torture and ill-treatment with a view to obtaining confessions;

(c) The information of the State party that representatives of international organizations other than the European Committee for the Prevention of Torture can talk to prisoners only when accompanied by representatives of the administration.

The State party should ensure prompt, impartial and effective investigations into all allegations of torture and ill-treatment and the prosecution and punishment of those found responsible, as well as the protection of complainants and witnesses of torture.

The State party should consider setting up a national system to review all places of detention and cases of alleged abuses of persons while in custody, ensuring regular, independent, unannounced and unrestricted visits to all places of detention. To that end, the State party should establish transparent administrative guidelines and criteria for access, and facilitate visits by independent monitors, such as independent non-governmental organizations.

The State party should finalize and adopt the draft federal Law No. 11807-3, which was adopted by the State Duma on first reading in September 2003 and is now in preparation for a second reading.

The State party should take appropriate measures to eliminate any adverse effect that the current law-enforcement promotion system may have on the prevalent use of torture and ill-treatment.

10. The Committee is further concerned at:

(a) Continuing reports of hazing¹ in the military (*dedovshchina*) as well as of torture and other cruel, inhuman or degrading treatment or punishment in the armed forces, conducted by or with the consent, acquiescence or approval of officers or other personnel, notwithstanding the State party's reported intention to develop an action plan to prevent hazing in the armed forces;

(b) Documented reports that victims who lodge complaints are subjected to further reprisals and abuse and that there is no system of protection for witnesses of such acts;

(c) Hundreds of reports that investigations are inadequate or absent, and that despite thousands of officers charged with such offences, that there is widespread impunity.

The State party should apply a zero-tolerance approach to the continuing problem of *dedovshchina* in the armed forces, take immediate measures of prevention and ensure prompt, impartial and effective investigation and prosecution of such abuses.

¹ The *Concise Oxford English Dictionary* (Eleventh edition) defines the verb "to haze" as follows: [N.Amer.] "torment or harass (a new student or recruit) by subjection to strenuous, humiliating, or dangerous tasks".

The State party should ensure the protection of victims and witnesses of violence in the armed forces and establish a rehabilitation programme, including appropriate medical and psychological assistance, for victims.

Violence against women and children, including trafficking

11. The Committee is concerned at

(a) The lack of formal complaints, according to the State party, despite reliable allegations of violence against women in custody;

(b) Reports of prevalent domestic violence and the lack of sufficient shelters for victims;

(c) Continued reports of trafficking in women and children for sexual exploitation.

The State party should ensure the protection of women in places of detention, and the establishment of clear procedures for complaints as well as mechanisms for monitoring and oversight.

The State party should ensure protection of women by adopting specific legislative and other measures to address domestic violence, providing for protection of victims, access to medical, social and legal services and temporary accommodation and for perpetrators to be held accountable.

The State party should strengthen measures to prevent and combat the sexual exploitation and abuse of children.

The State party should continue its efforts to ensure effective implementation of anti-trafficking legislation. The State party should adopt the proposed legislative amendments as well as the draft act “On Counteracting the Trafficking of People” to ensure more effective protection of victims and the prosecution of traffickers.

Investigations and impunity

12. The insufficient level of independence of the Procuracy, in particular due to the problems posed by the dual responsibility of the Procuracy for prosecution and oversight of the proper conduct of investigations, and the failure to initiate and conduct prompt, impartial and effective investigations into allegations of torture or ill-treatment.

As a matter of priority, the State party should pursue efforts to reform the Procuracy, in particular by amending the current federal Law on the Prosecutor’s Office to ensure its independence and impartiality as well as to separate the function of criminal prosecution from the function of supervision of preliminary investigations into allegations of torture. The State party should establish effective and independent oversight mechanisms to ensure prompt, impartial and effective

investigations into all reported allegations, and legal prosecution or punishment of those found guilty.

Independence of the judiciary

13. The Committee is concerned about:

(a) The system of tenure of judges and its impact on the independence of the judiciary;

(b) The system of election of jurors, which does not automatically exclude from jury duty heads of legislative or executive bodies, army servicemen, judges, prosecutors and officers of law enforcement bodies.

The State party should reform the system of selection of jurors to ensure that the participation of such persons in juries is banned and to exclude any possibility for arbitrary selection, which could undermine their neutrality and impartiality. The State party should continue its efforts to strengthen the independence of the judiciary, in particular in relation to the security of tenure of judges.

Juvenile justice system

14. While noting several legislative initiatives in progress, the Committee is concerned that the State party has not established a juvenile justice system.

The State party should pursue the reforms of the juvenile justice system and adopt the draft federal law “On the foundations of a juvenile system”, which, inter alia, provides for the creation of juvenile courts.

Asylum, non-refoulement and extradition

15. Matters related to article 3 of the Convention, including:

(a) Reports of more than 300 people returned this year to other neighbouring countries, according to the Ministry of Internal Affairs, and the lack of safeguards to ensure respect for the obligation of non-refoulement under article 3 of the Convention;

(b) The widespread and broad use of administrative expulsion according to article c18.8 of the Code of Administrative Offences for minor violations of immigration rules.

The State party should 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.

The State party should further clarify the violations of immigration rules which may result in administrative expulsion and establish clear procedures to ensure they are implemented fairly. The State party should ensure compliance with the

requirements of article 3 of the Convention for an independent, impartial and effective administrative or judicial review of the decision to expel.

The State party should issue identity documents to all asylum seekers at the outset of the asylum process, including at Sheremetyevo 2 airport.

16. The reported use of written assurances in the “refoulement” context, in circumstances where its minimum standards for such assurances, including effective post-return monitoring arrangements and appropriate due process guarantees followed, are not wholly clear and thus cannot be assessed for compatibility with article 3 of the Convention.

The State party should provide the Committee with detailed statistical information on the number of assurances sought for the period since 2002, the persons concerned and the outcome of each case, as well as on minimum contents for any assurances. The State party should moreover establish and implement clear procedures for obtaining such assurances, adequate judicial mechanisms for review, as well as effective post-return monitoring mechanisms.

Detention and places of deprivation of liberty

17. While noting the significant efforts undertaken by the State party (see para. 4), the Committee remains concerned at:

(a) Conditions in detention facilities and the continuing problem of overcrowded penal institutions and juvenile institutions;

(b) The failure of the new Criminal Procedure Code (2001) to impose mandatory limits on pre-trial detention during judicial proceedings;

(c) The situation of inadequate health care provided to persons in pre-trial detention centres and prison colonies.

The Committee encourages the State party to implement the Strategic framework for the development of the penitentiary system, which was adopted in September 2006, and to continue its efforts to address the problem of overcrowding in penal institutions and to improve conditions in prisons, including juvenile detention centres and pre-trial detention facilities, to ensure their conformity with the requirements of the Convention.

The State party should establish mandatory limits on pre-trial detention during judicial proceedings.

The State party should consider the establishment of a health service independent from the Ministries of Internal Affairs and Justice to conduct examinations of detainees upon arrest and release, routinely and at their request, alone or together with an appropriate independent body with forensic expertise, so that serious medical cases, particularly deaths in custody, are examined by impartial experts and results are made available to relatives of the deceased.

18. While noting the efforts undertaken by the State party to improve the situation, there continue to be inadequate living conditions in psychiatric hospitals for patients, including children, and there is also overcrowding in such institutions, which may be tantamount to inhuman or degrading treatment, as well as lengthy periods of confinement.

The State party should further develop outpatient services to reduce the problem of overcrowded psychiatric hospitals and reduce the time of hospitalization as well as take appropriate measures to improve the living conditions in inpatient institutions, for all patients, including children.

Training

19. The Committee is concerned at:

(a) The absence of training to detect signs of torture and ill-treatment for medical personnel in general and for personnel at temporary police detention facilities, in particular;

(b) The insufficient level of practical training regarding the obligations under the Convention for law enforcement personnel, judges as well as the military.

The State party should ensure practical training for doctors to detect signs of torture and ill-treatment of persons in accordance with the Istanbul Protocol, as well as for prosecutorial and military personnel in relation to the State party's obligations under the Convention.

The State party should further expand existing training programmes, including with non-governmental organizations, in the sphere of training of law enforcement and penitentiary personnel.

Compensation and rehabilitation of victims of torture

20. The lack of adequate compensation of victims of torture, as recognized by the Constitutional Court, as well as the absence of appropriate measures for rehabilitation of victims of torture and other cruel, inhuman or degrading treatment.

The State party should revise the current procedure of compensation, to bring it in line with constitutional requirements and obligations under article 14 of the Convention, ensuring that appropriate compensation is provided to victims of torture. The State party should ensure that appropriate medical and psychological assistance is also provided to victims of torture and ill-treatment.

Use of evidence obtained through torture

21. While the Code of Criminal Procedure states that evidence obtained by torture shall be inadmissible, in practice there appear to be no instruction to the courts to rule that the evidence is inadmissible, or to order an immediate, impartial and effective investigation.

The State party should adopt clear legal provisions prescribing the measures to be taken by courts should evidence appear to have been obtained through torture or ill-

treatment, in order to ensure in practice the absolute respect for the principle of inadmissibility of evidence obtained through torture, except against a person accused of torture, as required by article 15 of the Convention.

Violent attacks on human rights defenders

22. The Committee is concerned at:

(a) Reliable reports of harassment and killing of journalists and human rights defenders, including the recent murder of Anna Politkovskaya, who, according to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, was preparing a report on serious allegations of torture by officials in the Chechen Republic;

(b) The entry into force on 17 April 2006 of the new law governing the activities of non-commercial organizations, which expands the State's discretion to interfere in and severely hamper the activities of non-governmental organizations.

The State party should take effective steps to ensure that all persons monitoring and reporting torture or ill-treatment are protected from intimidation and from any unfavourable consequences they might suffer as a result of making such a report, and ensure the prompt, impartial and effective investigation and punishment of such acts.

The State party should ensure that the applicability of the new law is clearly defined and that the State's discretion to interfere in NGO activities is limited, and therefore, amend legislation governing the activities of non-governmental organizations to ensure its actual conformity with international human rights standards on the protection of human rights defenders, including the United Nations Declaration on Human Rights Defenders², as well as with best practices internationally.

Violent attacks because of race, ethnicity or identity of the victim

23. The reported rise in violent attacks because of the race, ethnicity or identity of the victim, including forced evictions in the Kaliningrad area, and the alleged absence of effective investigations into such crimes.

The State party should ensure that all officials are instructed that racist or discriminatory attitudes will not be permitted or tolerated and that any official who is complicit in such attacks will be prosecuted and suspended from his/her post pending resolution of the case or, if there is a danger of recurrence, transferred to a post which does not enable him/her to come into direct contact with potential

² Full title: Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.

victims. The State party should ensure prompt, impartial and effective investigations into all such acts of violence.

The situation in the Chechen Republic

24. The Committee is concerned at:

- (a) Reliable reports of unofficial places of detention in the North Caucasus and the allegations that those detained in such facilities face torture or cruel, inhuman or degrading treatment;
- (b) Numerous, ongoing and consistent allegations that abductions and enforced disappearances in the Chechen Republic, in particular during anti-terrorist operations, are inflicted by or at the instigation or with the consent or acquiescence of public officials or other persons acting in official capacities and the failure to investigate and punish the perpetrators;
- (c) The dual system of jurisdiction in the Chechen Republic involving both military and civilian prosecutors and courts;
- (d) Allegations of torture in the temporary holding facility within the Second Operational Investigative Bureau (ORB-2) of the North Caucasian Operative Administration of the Central Administrative Board of the Ministry of Internal Affairs in the Southern Federal District, as well as in several sub-offices of ORB-2 in the Chechen Republic;
- (e) The federal law “On counteracting terrorism” signed on 6 March 2006 fails to explicitly outline the applicability of the safeguards for detainees in the Code of Criminal Procedure to counterterrorist operations;
- (f) Allegations of widespread practice of detaining relatives of suspects of terrorism;
- (g) The reported practice of detention of persons for non-compliance with the requirements of the system for registration of residence.

The State party should ensure that no one is detained in any unofficial place of detention under its de facto effective control. The State party should investigate and disclose the existence of any such facilities and the authority under which they have been established and the manner in which detainees are treated. The State party should publicly condemn any resort to secret detention and prosecute anyone engaged in or complicit in this practice.

The State party should take all necessary measures to prohibit and prevent abductions and enforced disappearances in any territory under its jurisdiction, and prosecute and punish the perpetrators.

The State Party should ensure effective use of joint investigative groups including representatives of both military and civil (territorial) Office of the Public Prosecutor until such time as the competence and jurisdiction of any case can be determined and ensure the right to fair trial to all suspects.

The State party should conduct a thorough and independent inquiry into the methods used in holding facilities in ORB-2 when questioning prisoners.

The State party should conduct prompt, impartial and effective investigations into all allegations of torture and ill-treatment in these and other facilities, including examination of medical reports supplied to court cases documenting mistreatment, and ensure that persons responsible are subject to prosecution with appropriate sanctions.

Reiterating its previous recommendation, the State party should clarify the applicable legal regime that currently prevails in the Chechen Republic, 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 that they will not be caught in a vicious circle of various military and civilian departments and agencies with differing degrees of responsibility

The State party should ensure that any counter-terrorism measures taken with regard to the Chechen Republic and any other territory under its jurisdiction, remain in full conformity with the Convention's prohibitions against torture and ill-treatment.

The State party should establish safeguards against reprisals in order to protect all complainants, including, inter alia, those who submit cases on torture or disappearances to the European Court of Human Rights or under article 22 of the Convention.

25. The Committee appreciates the data submitted by the representatives of the State party regarding hazing (*dedovshchina*) in the armed forces as well as on the application of articles 117 and 302 of the Criminal Code, but regrets the absence of comprehensive official statistics on investigations of complaints about torture in police custody and penal institutions in the territory under the State party's jurisdiction. The State party should provide to the Committee detailed statistical data, disaggregated by crimes and sex, and with a breakdown by region, on complaints alleging torture and ill-treatment by law-enforcement officials and prison officers and on any related investigations and prosecutions, as well as penal and disciplinary measures. The Committee also requests statistical information on the number of cases, if any, where courts rejected prosecutorial requests for pre-trial detention because law-enforcement bodies violated legal procedures relating to custody.

26. The Committee encourages the State party to continue to permit international inspection of places of detention, including by the European Committee for the Prevention of Torture (CPT) and, recalling that representatives of the State party referred repeatedly to recent findings by the individual members of the CPT on the Chechen Republic, recommends that the State party authorize the publication of the CPT's reports on the Chechen Republic and other areas.

27. The Committee regrets that the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment could not yet conduct a visit to the North Caucasus Republics

of Chechnya, Ingushetia, North Ossetia and Kabardino-Balkaria and urges the State party to permit this visit, in full conformity with the Terms of Reference for fact-finding missions by special procedures of the United Nations. The Committee also encourages the State party to ratify the Optional Protocol to the Convention against Torture.

28. The State party should widely disseminate its report, and its reply to the list of issues, and the summary records, conclusions and recommendations of the Committee, in all appropriate languages through official websites and the media.

29. The Committee requests that the State party provide, within one year, information on its response to the Committee's recommendations contained in paragraphs 8, 10, 12, 16, 22, 23 and 24 above.

30. The State party is invited to submit its fifth periodic report by 31 December 2010.
