

# TREATY BODY MONITOR

International Service for Human Rights



Human Rights Monitor Series

## COMMITTEE AGAINST TORTURE 37<sup>TH</sup> SESSION, 6 – 24 NOVEMBER 2006 RUSSIAN FEDERATION, 4<sup>TH</sup> REPORT

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### Information submitted to the Committee

On 21 July 2004, the Russian Federation submitted its fourth periodic report to the Committee Against Torture (the Committee).<sup>1</sup> The report covered the period from 2000-2004 and enumerated the measures and reforms<sup>2</sup> adopted in order to implement the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (the Convention).<sup>3</sup> The report is merely descriptive and only few references were made regarding the effective results of policies. Mr Valery Lochchinin, Permanent Representative of the Russian Federation in Geneva and chairman of Russia's delegation, apologised for the absence of the Federal Prosecutor, who would have been the most qualified to reply to the Committee's questions.<sup>4</sup> However, he stressed the strong willingness of the delegation to have an effective and constructive dialogue. In his presentation, he emphasised the effort the Government had undertaken in recent years to implement the Committee's previous recommendations, including through changes in the Criminal Code. He also underlined a number of measures adopted to improve the living conditions of prisoners, in particular the

<sup>1</sup> CAT/C/55/Add.11 (8 April 2005), available at

<http://www.ohchr.org/english/bodies/cat/docs/AdvanceVersions/CAT.C.55.Add.11.pdf>.

<sup>2</sup> The main measures were: the reform of the Criminal Code, the new Code of Administrative Offences, and the Federal Constitutional States of Emergency Act.

<sup>3</sup> For the full text of the Convention please refer to the OHCHR web site: <http://www.ohchr.org/english/law/cat.htm>.

<sup>4</sup> The delegation included also representatives of the Federal Service for Execution of Sentences, the Ministry of Defense, the Ministry of the Interior, and the Ministry of Foreign Affairs.

additional funds devoted to reorganising building in detention facilities, to provide adequate medical assistance to detainees as well as to effectively train prison personnel.

Several non-governmental organisations (NGOs) presented parallel reports to the Committee detailing descriptions and testimonies of alleged violations in Russia.<sup>5</sup> Most reports concentrated on the situation in Chechnya, highlighting the widespread and systematic use of torture, the existence of a number of secret detention centres and the limitation of freedom of movement for Chechens. Other reports expressed concern for the increase of disappearances in Russia and the routine failures in persecuting and convicting those responsible.

## Themes and issues<sup>6</sup>

The Committee welcomed the Russian delegation and expressed its regret for the absence of the General Prosecutor, since there were several technical issues that he could have clarified. The delegation was also late in submitting its written replies and it was therefore not possible to provide a translation in all of the working languages of the Committee. Accordingly, the delegation summarised the main content.

The Committee focused its questions on the judicial system and the measures in place to convict those responsible for violations; the living conditions in detention centres; the situation in Chechnya, particularly regarding the existence of secret detention centres; and the role of the Russian army and the military administration in the use of torture. Several explanations were also demanded regarding specific cases reported by NGOs.

## Implementation of the Covenant

The Committee expressed concerns that the definition of torture under the Russian Criminal Code did not incorporate all elements required under Article 1 of the Convention. The Committee was principally concerned with the lack of any explicit reference to torture committed by public officials. The delegation replied that the Criminal Code provided an extensive interpretation of Article 1, stating that any individual older than 16 years could be prosecuted for torture, regardless of their role. It also added that according to the Supreme Court, all relevant courts have to apply the Convention in their sentences, and in the case of any conflict of interpretation the Convention prevails. In its conclusions and recommendations, the Committee recommended that the Russian Federation amend its definition of torture to conform to Article 1 of the Convention and to ensure that police, army and prosecutorial officials can be prosecuted.<sup>7</sup>

## Living Conditions in Detention Centres

The delegation described in its presentation the measures adopted to improve living conditions in detention centres, and placed particular emphasis on the role of medical assistance in those centres. During the discussion, the Committee asked for several clarifications regarding access to medical assistance and the obligation for doctors to report cases of abuses and violence. The delegation explained that any required treatments were provided without any time limitation. However, prisoners also have the right to be visited by

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<sup>5</sup> Parallel reports were submitted by: Amnesty International, Global Initiative to end all corporal punishment of children, FIDH Roma, Human Rights Watch. All NGO reports are available on the OHCHR website at: <http://www.ohchr.org/english/bodies/cat/cats37.htm>.

<sup>6</sup> Unofficial press releases of the session are available at: [http://www.unog.ch/unog/website/news\\_media.nsf/\(httpNewsByYear\\_en\)/F8A865D852367444C125722200519B95?OpenDocument](http://www.unog.ch/unog/website/news_media.nsf/(httpNewsByYear_en)/F8A865D852367444C125722200519B95?OpenDocument) and [http://www.unog.ch/unog/website/news\\_media.nsf/\(httpNewsByYear\\_en\)/BAA5A1EABE45D390C1257225004DC47B?OpenDocument](http://www.unog.ch/unog/website/news_media.nsf/(httpNewsByYear_en)/BAA5A1EABE45D390C1257225004DC47B?OpenDocument).

<sup>7</sup> CAT/C/RUS/CO/4, 23 November 2006: <http://www.ohchr.org/english/bodies/cat/docs/AdvanceVersions/CAT.C.RUS.CO.4.pdf>.

their own doctor. The delegation also added that doctors had to record in the prisoners' personal file any violence or abuses noticed during a visit. In its final observations, the Committee encouraged the State to continue its efforts to improve the living conditions in detention centres. It also recommended the establishment of an independent health service to conduct examinations of detainees upon arrest and release, and an additional independent body to examine the most serious cases, particularly deaths in custody. The Committee also recommended that the State party ensure practical training for doctors, law enforcement and penitentiary personnel to detect signs of torture and ill treatment.

Referring to the high number of cases reported by NGOs of rape and violence against women, the Committee asked for more information regarding the procedures and guarantees adopted to combat these abuse. The delegation stated that no cases of sexual abuse in detention centres were recorded. However, several guarantees were provided, such as separated detention centres for men and women, and female personnel in women centres. It also added that medical assistance was provided in order to respond to specific needs of women. This included counsel in case of sexual abuses, and facilities for pregnant women and for women with children up to 3 years old. The Committee in its concluding observations<sup>8</sup> recommended that the State establish clear complaints procedures and oversight mechanisms to protect women in places of detention.

The Committee emphasised the role of inspections in detention centres, citing the need for them to be carried out both by international and national bodies to combat torture, and asked for more information regarding accessibility. The delegation explained that the government set up a commission to conduct periodic inspections and provide suggestions and recommendations to improve the system. Furthermore, the media, members of Parliament and Government, and the representatives of NGOs could visit the centres with prior communication with the Ministry of Interior and the Director of the detention centre. It also added that several international delegations, such as the European Commission for the Prevention of Torture (CPT) and the Council of Europe Human Rights Commissioner had already carried out several inspections and that their reports had been published. The Committee followed up by asking for more information on the outcomes of these inspections, emphasising that only one CPT report had been published after seven inspections. In its final observations the Committee recommended that the Russian Federation create a national system to review all places of detention and cases of alleged abuses ensuring regular, independent, unannounced and unrestricted visits to all place of detention.

Following from this line of questioning, the Committee expressed concern regarding the refusal of the Russian government to allow to the UN Special Rapporteur on Torture to carry out a visit, effectively forcing him to postpone it indefinitely. It asked what kind of steps the government was taking to allow the visit. The delegation explained that the State was working hard to find a solution but that the conditions required by the Special Rapporteur were not compatible with Russian laws. The Committee pointed out that visit of the Special Rapporteur, in order to be effective, would have to allow for visits to any centre of detention and for private interviews with any prisoner in private and without interference. In its concluding observations, the Committee urged the Russian Federation to permit the visit of the Special Rapporteur on torture in full conformity with the Terms of Reference for fact-finding missions by special procedures of the United Nations.<sup>9</sup>

## **Chechnya**

When asking questions on Chechnya, the Committee referred several times to information provided by NGOs. The main concern regarded testimonies and evidence of the existence of secret detention facilities in the region, as well as the use of torture in those facilities as a means to obtain information. The delegation replied that the prosecutor had carried out investigations but no evidence was obtained confirming these allegations. In its concluding observations, the Committee recommended that the State ensure that no persons

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<sup>8</sup> CAT/C/RUS/CO/4, 6 February 2007.

<sup>9</sup> See <http://ohchr.org/english/bodies/chr/special/visits.htm>.

would be detained in any un-official place of detention, and to investigate and disclose the existence of such facilities.

The Committee followed up on this issue by requesting additional information on the high number of disappearances conducted in non-official centres by policemen, according to testimonies received. The delegation replied that those facilities were the Operational Investigative Bureau (ORB), a temporary detention centre, which primarily investigates organised crime and terrorist activities. It explained that any suspect would be registered within three hours of his or her arrest if in this time any substantial evidence was found. It declared that in 2005 only five persons were detained in those facilities. It also explained that detainees could complain, and that the Regional Prosecutor was then bound to investigate such complaints. In its concluding observations, the Committee urged the State to take all necessary measures to prohibit and prevent abductions and enforced disappearances and to punish the perpetrators. It also recommended conducting an independent inquiry into the methods used to question prisoners at ORB facilities.

The Committee also raised the case of the murder of journalist Anna Politkovskaya while she was conducting investigations on acts of torture in Chechnya. It asked for more information on whether investigations were underway to find those responsible for the murder, as well as to find evidence to clarify the allegations reported in her last article regarding torture in Chechnya. The delegation replied by expressing its dismay for her death. It explained that investigations were underway, but nothing had yet been concluded.

The Committee proceeded to discuss the role of Russian troops in Chechnya. It raised concerns as to whether the region was under civil or military administration and asked for greater clarification on the role and jurisdiction of the Military Prosecutor. The delegation explained that the Russian troops were used to protect military facilities. It also explained that there was a 21% increase in criminal and terrorists activities in the region, which required an intensification of police investigations and additional troop support. Finally, it explained that the Military Prosecutor was under the responsibility of the Federal Prosecutor. In its concluding observations, the Committee reiterated its previous recommendation that the State should clarify the legal regime that is currently applicable in Chechnya.<sup>10</sup> This would allow individuals to know where to turn for seeking redress.

The Committee was also concerned by information received from NGOs of the existence of internal passports for Chechnya, which would constitute a violation of the right to freedom of movement. The delegation replied that restrictions could be decided only in case of emergency. However, it explained that no limitations of movement currently existed in Chechnya.

## Extradition

The Committee expressed serious concern about the issue of safeguarding the principle of non-refoulement.<sup>11</sup> This was discussed in light of the case of 14 Uzbeks who were extradited in disregard of a ruling by the European Court of Human Rights (ECHR) to stop the deportation. The delegation replied that Russian law prohibited extradition to a country in which torture and inhuman treatment were suspected. However, the law allows for extradition if the receiving country provides clear guarantees against acts of torture.<sup>12</sup> The Committee asked for further explanation on how those guarantees could be ensured in practice, but no further information was provided by the delegation. In its concluding observations, the Committee recommended that

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<sup>10</sup> The Committee pointed out that “there is no state of exception and there is also a non-international armed conflict in progress.”

<sup>11</sup> Non-refoulement is a principle of international law that forbids extradition of a person into an area where he or she might be subjected to torture.

<sup>12</sup> This practice is known as diplomatic assurances, where the receiving State promises to not treat an individual contrary to human rights norms when that person is extradited/returned by a sending State; they are used by States to try to make sure that they do not violate the principle of non-refoulement. The use of diplomatic assurances is criticised by a number of UN mechanisms including several special procedures of the Human Rights Council and treaty bodies, because they do not guarantee the human rights of the person to be extradited.

the State ensure that no person was expelled or extradited to a country where he or she would be in danger of being subjected to torture.

### **Justice system**

The Committee expressed concern regarding the high number of complaints of torture registered and the decrease in the number of successful prosecutions. It asked for more information regarding complaint procedures and guarantees provided to victims and on the existence of any disciplinary procedure to punish officials who did not prosecute violations. The delegation explained that victims of torture have the right to complain and denounce any abuse, but it did not provide any further details. It added that the Federal Prosecutor was obliged to investigate any allegations of 'negligence'. In its concluding observations, the Committee commented that the State should ensure prompt, impartial and effective investigations into all allegations of torture and ill-treatment and the persecution and punishment of those found responsible. It also underlined that the independence and impartiality of the Prosecutor's Office should be ensured, and that the functions of supervision and investigation into allegations of torture should be separated from the function of criminal prosecution.

The Committee also expressed concern regarding the procedure for the nomination of judges. It stated that the power of the government to nominate and remove judges could affect their independence. The delegation replied that the government nominated judges from a list of candidates proposed by a commission of judges in order to guarantee transparency and independence. The Committee recommended that the State continue its efforts to strengthen the independence of the judiciary, in particular in relation to personal security.

The Committee expressed concern regarding the age of criminal responsibility, stating that 14 years of age was too low and violated the *Convention on the Rights of the Child*. Other concerns were voiced regarding the fact that a high number of children were still treated as adults during trials and were being sent to adult detention centres. The delegation stated that a separate juvenile system and court had already been set up to deal with youth crimes and was managed by experts. It also explained that children could not be convicted for more than 10 years, and that imprisonment is considered only as a last option. In its concluding observations, the Committee recommended that the State pursue the reforms of the juvenile justice system and adopt the draft federal law "*On the foundations of a juvenile system*", which also provides for the creation of juvenile courts.

The Committee asked for more information regarding the right to a legal counsel during interrogations, particularly surrounding the unclear procedure of the admissibility of lawyers, and the numbers of violations reported by NGOs. The delegation replied that any suspect had the right to be assisted by a lawyer in a confidential manner from the moment of their accusation. The Committee referred to the case of lawyer Irina Komissarova being forcibly removed from her cases. The delegation replied that she had to leave the case because she was also giving testimony in the trial. In its concluding observations, the Committee recommended that the State ensure the implementation in practice of the right to access a lawyer from the moment of the deprivation of the liberty, and in particular not only at the request of a public official but at the request of the detainee.

### **Other themes**

The Committee expressed concern regarding the suppression of an NGO for practicing 'extremist activity', and the possibility of refusing registration for those whose objectives could represent a threat for stability and security. The delegation replied that only five NGOs were refused registration and that the procedure was ongoing. In its concluding observations, the Committee recommended that the State amend its legislation regarding the activities of NGOs in order to limit the State's discretion to interfere, and to bring it into conformity with international law including the *United Nations Declaration on Human Rights Defenders*.

The Committee expressed concern about the harassment of several human rights defenders and asked for explanations. It also proposed that the State invite the Special Representative of the Secretary General on Human Rights Defenders. The delegation did not give any satisfactory explanation, but merely said the Government could receive special procedures at any time. In its concluding observations, the Committee recommended that the State take effective steps to ensure that all persons monitoring and reporting torture or ill treatment would be protected from intimidation and threats, and to ensure impartial investigation and punishment.

The Committee expressed concern for the phenomenon of hazing<sup>13</sup> within the army, which in several cases had amounted to torture, and inducing a numbers of soldier to commit suicide. The delegation replied that a special military unit was set up to address this issue and that a draft law to develop standard procedures in those cases was under discussion in the Parliament. In its concluding observations, the Committee declared that the State should apply ‘a zero tolerance approach’ to the problem of hazing in the military, take measures to prevent its occurrence in the future and ensure prompt, impartial and effective investigation. It also recommended ensuring protection both for victims and witnesses, and the provision of medical and psychological assistance.

## Conclusion and next steps

The session was characterised by a lack of time. Even though the delegation took a long time to reply to some issues, it avoided answering several questions and provided vague responses to others. The Committee asked the delegation to provide more complete answers in written format in order to address these shortcomings. During the dialogue, the Committee tried several times to focus the delegations’ answers on the main issues, particularly regarding the situation in Chechnya, but was unsuccessful. It concluded its interventions by reiterating the questions that the delegation had avoided responding to, and expressed its hope that it would receive responses in a written format.

In its concluding observations, the Committee reiterated its regret at the absence of a representative of the General Prosecutor’s office. It appreciated the additional oral and written replies that the delegation had provided. The Committee recommended that the State provide detailed statistical data on complaints alleging torture and ill-treatment. It also recommended that the State ratify the *Optional Protocol to the Convention Against Torture*<sup>14</sup>. Finally, it invited the Russian Federation to submit its fifth periodic report by 31 December 2010.

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<sup>13</sup> ‘Hazing’ is the ritualistic harassment of new soldiers in the military by their peers.

<sup>14</sup> The Optional Protocol was adopted on 18 December 2002 at the fifty-seventh session of the General Assembly of the United Nations by resolution A/RES/57/199. The text is available on the OHCHR web page: <http://www.ohchr.org/english/law/cat-one.htm>.

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The *Treaty Body Monitor* forms part of the Human Rights Monitor Series produced by ISHR. It reports on each country reviewed by the seven treaty bodies and provides an overview of every treaty body session. It is currently an online publication that can be found at <http://www.ishr.ch/hrm/TMBs>.

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