

Compliance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment

RUSSIAN FEDERATION

Alternative NGO report to the UN Committee against Torture (CAT)

Prepared by Physicians for Human Rights (PHR)

To be submitted for the 5th periodic review of the Russian Federation, CAT, 49th Session

Geneva, November 2012

About Physicians for Human Rights

Physicians for Human Rights (PHR) is an independent organization that uses medicine and science to stop mass atrocities and severe human rights violations against individuals. We use our investigations and expertise to advocate for the:

- Prevention of individual or small scale acts of violence from becoming mass atrocities
- Protection of internationally-guaranteed rights of individuals and civilian populations
- Prosecution of those who violate human rights

PHR was founded in 1986 on the idea that health professionals, with their specialized skills, ethical duties, and credible voices, are uniquely positioned to stop human rights violations. Today, our expertise is sought by local human rights organizations, governments, the United Nations, international courts, and regional groups like the African Union and the European Union. The power of our investigations allows us to work with others to raise awareness and press for change on the most severe human rights violations of the day.

PHR's Role in Investigating Documenting, and Preventing Torture

PHR has been instrumental in investigating allegations of torture, calling on states to implement effective measures to protect people from torture, training medical and legal professionals in international standards of investigation for torture, and assisting asylum seekers in the US by connecting them with medical professionals trained to document the signs of torture and ill treatment.

Since 1999, PHR has played a leading role in training medical and legal professionals in implementation of the Istanbul Protocol, a UN document outlining the international standards for effective legal and medical evaluations conducted to investigate allegations of torture and ill treatment. Armed with hard evidence of torture and its effects, survivors of torture are able to help end the cycle of impunity that prevents torturers from being brought to justice and that prevents survivors from healing. PHR's training ensures that medical professionals understand the relevant laws in their home countries as well as common torture methods and their physical and psychological consequences. PHR then teaches these practitioners how to conduct the clinical interview and exam in order to document physical and psychological evidence and adhere to proper ethical guidelines. PHR has trained hundreds of health professionals in 14 countries to use the Istanbul Protocol standards.

In the US, PHR-trained clinicians have been able to assist asylum seekers fleeing torture and persecution in their home countries. PHR's Asylum Network is a network of hundreds of health professionals who offer *pro bono* forensic physical and psychological evaluations to document evidence of torture and persecution for asylum seekers. The Asylum Network has provided specialized training and expertise in recognizing and documenting the trauma of abuse, discrimination, and oppression using the Istanbul Protocol standards. The medical-legal affidavits the clinicians produce for courts on behalf of survivors are frequently the determining factor in judges' decisions to grant asylum or other immigration relief to those fleeing persecution.

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Physicians for Human Rights

This report focuses on the widespread use of torture and ill treatment by police and government officials in the Russian Federation against gay and lesbian individuals, those with dissident political opinions, members of ethnic and religious minorities, and women. Over the past four years, PHR's medical experts have conducted almost 50 forensic medical evaluations in support of asylum applications in the US for people persecuted in Russia. The resulting affidavits document evidence of torture, as defined under CAT, committed either by government officials or with their acquiescence.

Physicians for Human Rights (PHR) requests authorities of the Russian Federation to:

- Amend the definition of torture in the Criminal Code so that it complies with the definition of torture as outlined in CAT, specifically as it relates to discrimination on the basis of race, gender, sexual orientation, or political opinion.
- Ensure that perpetrators of torture and ill treatment are brought to justice under the provisions set forth in the Criminal Code.
- Amend the Criminal Procedure Code as necessary to ensure that allegations of crimes, including torture and ill treatment, committed by law enforcement or other government officials are investigated promptly by an independent and transparent body and prosecuted.
- Create mechanisms of responsibility to ensure that police officers and other government officials respond adequately to pleas from citizens regarding abuse, harassment, or torture as defined by CAT.

- Prosecute allegations of torture and ill treatment by law enforcement and government officials as part of a multi-pronged strategy to end the culture of impunity for CAT violations in the Russian Federation.
- Officially recognize the Istanbul Protocol standards and implement them nationwide to ensure that torture and ill treatment can be effectively investigated and documented for use in prosecutions against perpetrators.

Background

Since Russia's last periodic review under CAT in 2009, some legislative progress has been made to bring its Criminal Code more in line with the requirements of CAT, including refining the definition of torture, imposing penalties on government officials found complicit in torture, and creating some modes of redress for victims of torture.

Nevertheless, torture continues to be reported in places of detention in Russia. Torture of gay and lesbian individuals by police officials and other government authorities continues to be endemic. Human rights activists and opponents of the government have been beaten by police officers and tortured while in detention for spurious reasons. Although Russia currently has the highest number of torture and ill treatment complaints before the European Court of Human Rights (more than any other state party to the European Convention on Human Rights), prosecution of torturers is rare within Russia.¹

Impunity for torturers in Russia continues to be a major systemic problem. Political persecution of people who criticize government or business interests goes unchecked as prosecutors and judges are unwilling or unable to investigate and follow up on allegations of torture. Conditions of places of detention are deplorable, constituting human rights violations of prisoners who receive inadequate medical care, insufficient food and other basic necessities, and abuse and harassment by prison officials.² "The [Russian] constitution prohibits such practices; however, there were numerous, credible reports that law enforcement personnel engaged in torture, abuse, and violence to coerce confessions from suspects, and there were allegations authorities did not consistently hold officials accountable for such actions. ... Prosecutors are only able to bring charges of simple assault or exceeding authority against police officers suspected of engaging in torture."³

¹ EUROPEAN COURT OF HUMAN RIGHTS, STATISTICS ON JUDGMENTS BY STATE 6 (2010), http://www.echr.coe.int/NR/rdonlyres/E6B7605E-6D3C-4E85-A84D-6DD59C69F212/0/Graphique_violation_en.pdf; EUROPEAN COURT OF HUMAN RIGHTS, ANALYSIS OF STATISTICS 2011 8 (Jan. 2012), http://www.echr.coe.int/NR/rdonlyres/11CE0BB3-9386-48DC-B012-AB2C046FEC7C/0/STATS_EN_2011.PDF.

² BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, U.S. DEP'T OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2011: RUSSIA, *available at* <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dclid=186397>.

³ *Id.*

Compliance with the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment

Russian Federation

Article 1:

Russia's Criminal Code states that "Torture in this Article and in other Articles of this Code shall mean the infliction of physical or mental suffering for the purpose of compelling to give evidence or to commit other actions against a person's will, as well as for the purpose of punishing, or for other purposes."⁴

However, under Article 1 of CAT, "torture" is defined as "severe pain or suffering...intentionally inflicted...for any reason based on discrimination of any kind...inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity."⁵ According to the forensic medical affidavits PHR has collected from Russians fleeing persecution, torture is often associated with discrimination on the basis of sexual orientation, gender, race, political views, or religion. Though Article 117(h) of the Russian Criminal Code provides for stiffer penalties for torture "by reason of national, racial, or religious hatred or enmity,"⁶ the state does not reliably prosecute on that basis nor does that provision provide any protection on the basis of sexual orientation or political belief. Without the specific inclusion of discrimination as a prohibited basis for torture, Russia is inadequately addressing its obligations under CAT.

Tortured for Being Gay: The Story of Mr. A.

The following narrative is excerpted from a medical-legal affidavit submitted in support of an asylum application based on allegations of torture in Russia. It was prepared following a forensic evaluation conducted by a psychiatrist in the fall of 2009. Key details have been omitted in order to shield the identity of the asylum applicant.

Mr. A. suffered a childhood of bullying, assaults, and harassment for being perceived as effeminate. As an adult in 2005, Mr. A.'s father, a highly ranked Russian police officer, threatened to kill him for being gay. His father attacked him, knocking him down and kicking him until neighbors intervened. Mr. A.'s father was never prosecuted or held accountable for his assault on Mr. A. Later in life, Mr. A. was mugged and knocked unconscious. Upon reporting the attack to the police, he was told that he "deserved it" for being a "fag." In another incident, Mr. A. and a boyfriend were mugged at knifepoint, and when they reported it to the police, no action was taken and instead

⁴ Ugolovnyi Kodeks Rossiiskoi Federatsii [UK RF][Criminal Code] art. 117 (Russ.).

⁵ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85, 113, art. 1 [hereinafter CAT].

⁶ Ugolovnyi Kodeks Rossiiskoi Federatsii [UK RF][Criminal Code] art. 117(h) (Russ.).

they were called anti-gay epithets. Mr. A.'s physical and mental suffering were inflicted upon him by homophobic individuals with the acquiescence of police officers. In the case of his father, Mr. A.'s physical suffering was directly inflicted by a person acting in an official capacity.

Article 2:

Though Russia has ratified CAT and amended its Criminal Code to re-define torture and include punishments for torturers, it has ultimately failed to take “effective legislative, administrative, judicial or other measures to prevent acts of torture.”⁷ Ethnic minorities, people from former Soviet republics, gay, lesbian, bisexual, or transgender people, women, and opponents of the government are singled out and targeted by police for harassment and torture. Victims of harassment or assault from both government officials and private citizens often have a difficult time obtaining protection from police or redress in the courts.

Police Torture: The Story of Mr. S.

The following narrative is excerpted from a medical-legal affidavit submitted in support of an asylum application based on allegations of torture in Russia. It was prepared following a forensic evaluation conducted by a neurologist in the fall of 2010. Key details have been omitted in order to shield the identity of the asylum applicant.

Torture committed by police authorities goes unchecked in Russia. Mr. S. is a gay man who sought asylum in the US after being attacked for his sexuality in Russia. In 2004, police officers yelled anti-gay slurs at Mr. S., proceeding to throw him onto the concrete ground. He hit his head and sustained lacerations to his shoulder. The police then used a blunt object to beat him all over his face, head, and body until he lost consciousness. He was then placed in a police vehicle whereupon he vomited from the concussion he received. He was thrown from the vehicle and abandoned. He continues to suffer anxiety, depression, chronic headaches, and dizziness as a result of the police officers' attack.

Mr. K: Tortured for Political Opinions

The following narrative is excerpted from a medical-legal affidavit submitted in support of an asylum application based on allegations of torture in Russia. It was prepared following a forensic evaluation conducted by an internist in the fall of 2009. Key details have been omitted in order to shield the identity of the asylum applicant.

⁷ CAT, art. 2.

In 2005, Mr. K. spoke out against the government at a public town meeting. Two weeks later, while he was playing chess in a park with friends, police officers approached him and yelled, "You need to shut your mouth." They threw him to the ground. The officers handcuffed and kicked him, taking him to a police station. He was in jail for 11 hours until friends were able to pick him up. While in detention, Mr. K. was in a cell with concrete walls and floor with no bed or place to sit. The walls were covered in small shards of glass, which made it impossible for him to rest against them. Half an hour after he was taken to the cell, two police officers entered and began to beat him with a rubber stick. He was hit all over his body, including his back, kidneys, groin, chest, and feet. Twice he was burned with cigarettes. The beatings took place three or four more times while he was in jail, each occasion lasting 20-30 minutes. Mr. K. sustained lacerations to his forehead and chin, a broken tooth, cigarette burns, and diffuse bruising. He had blood in his urine for a week following his detention. In 2006, Mr. K. was assaulted by two men who beat him up and put a knife to his chest. He was told to keep his mouth closed and to not criticize the government. Following this assault, Mr. K. experienced ongoing harassment from government officials, causing him to lose his business. He was forced to seek asylum in the United States as a result of this ongoing harassment and ill treatment.

Articles 12 and 13:

Russia has been slow to acknowledge and investigate allegations of torture by government officials. Some high-profile journalists and political figures, as well as victims' families, have made allegations of torture in the past couple of years in Russia, and yet impartial and transparent investigations into these cases were either insufficient or altogether absent. No case exemplifies these deficiencies more clearly than the case of Sergei Magnitsky.

High-Profile Torture in Detention: The Death of Sergei Magnitsky

Sergei Magnitsky was a Russian attorney for the Hermitage Fund who exposed a \$230 million theft that implicated government officials. He was arrested and tortured while in detention, ultimately dying of his injuries. Mr. Magnitsky testified that Russian officials misappropriated three companies from his client and embezzled \$230 million in public funds. Shortly after providing his testimony, Mr. Magnitsky was arrested by the same officials he had testified against. While in custody, Mr. Magnitsky was subjected to cruel and inhumane conditions and denied access to legal counsel. After 358 days in jail, he died on November 16, 2009, at age 37. After his death, family requests for an independent autopsy were denied by the Russian authorities. As a result, the body was buried without having undergone a full and independent forensic medical evaluation.

In the fourth medical study of the case released in early July 2011, official Russian experts admitted that inadequate medical care had contributed to Mr. Magnitsky's death. However, the investigation ignored significant findings about the continuously worsening and cruel conditions Mr. Magnitsky endured. During Mr. Magnitsky's final hours, he did not receive any necessary medical attention.

A team of PHR forensic experts reviewed official documents made available through the victim's mother. The report concludes that:

- *Mr. Magnitsky had been experiencing both psychological and physical pressure in a detention center, and the conditions in some of the wards of Butyrka can be justifiably called torturous.*
- *The conditions under which Mr. Magnitsky was detained in the Russian penitentiary system do not comply with European standards.*
- *Mr. Magnitsky suffered prolonged severe pain, was denied regular contact with his family, denied medical evaluations for his complaints, fed meals irregularly, and kept under inhumane conditions.*
- *The official Russian autopsy protocol (on which all subsequent Russian medical studies were based) was inconsistent with best international practice and deviated significantly from standard US protocols.*
- *Tissues from injuries found on Magnitsky's body after his death were not removed during the autopsy and their forensic analysis has not been carried out, as required by the Minnesota Protocol (the model protocol for investigation of extra-legal, arbitrary and summary executions).*
- *Mr. Magnitsky received inadequate medical attention and evaluations for the differential diagnoses of his ongoing symptoms. The neglect was calculated, deliberate and inhumane. He received inadequate medical evaluation and treatment throughout his detention and on the day of his death this continued. There were significant delays on obtaining medical evaluation and treatment by the prison authorities. Although there is conflicting information, it appears that resuscitation at the very least was not timely, if performed correctly at all. If that is the case, the delay may have sealed Mr. Magnitsky's fate. This repeated medical neglect and outright disregard for the well-being of Mr. Magnitsky was undoubtedly a significant factor leading to his death.*

In June 2011, a lawyer for Mr. Magnitsky's family filed a lawsuit demanding release of the tissue samples to the family for an independent study. A hearing is set for July 19, 2011. PHR agrees to examine tissue samples from Mr. Magnitsky if the government releases them and Mr. Magnitsky's mother provides them to the organization.

On October 1, 2012, it was announced that Mr. Magnitsky's mother would testify the next day at the Moscow trial of Dmitry Kratov, the doctor at Butyrka Prison who denied her son medical attention.

After three years of investigation, the Russian authorities charged Dmitry Kratov, former deputy head of Butyrka detention center responsible for medical care. He is the only official being prosecuted for the death of Mr. Magnitsky. Russian authorities charged Kratov with negligence rather than torture or homicide. The charges were made ignoring the findings of the Russian President's Human Rights Council and petitions from Mr. Magnitsky's family showing evidence that Mr. Magnitsky systematically denied medical care and was tortured and ultimately beaten to death in custody in an effort to force him to change his testimony against corrupt Russian government officials.

PHR's entire forensic review on Mr. Magnitsky's case can be found here:
https://s3.amazonaws.com/PHR_Reports/magnitsky-report-july2011.pdf

Article 16:

Russia is responsible under CAT for preventing other acts of cruel, inhuman, or degrading treatment when committed by a public official or other person acting in an official capacity.⁸ High-ranking bureaucrats and other government officials have been known to act with impunity against political enemies or others.

Mental Anguish and Impunity: Ms. L.'s Misery

The following narrative is excerpted from a medical-legal affidavit submitted in support of an asylum application based on allegations of torture in Russia. It was prepared following a forensic evaluation conducted by a clinical psychologist in the winter of 2010. Key details have been omitted in order to shield the identity of the asylum applicant.

Ms. L. was an administrative assistant for a deputy director of a major gas company in Russia. That director went on to win an election for local political office, after having forced his employees (including Ms. L.) to campaign on his behalf. When she rebuffed his sexual advances, the government official began to make her life more and more miserable. He had her followed, he demoted her, and he used sexually derogatory terms to harass her. He threatened to kill her and made other violent threats toward her as well. Ms. L.'s mother went to the police to report the threats and activities of this government official, but they refused to help in any way. The government official continued to belittle and harass Ms. L., threatening to ruin her life, going so far as to threaten to frame her for drug trafficking so she would be jailed. Ms. L. was diagnosed with post-traumatic stress disorder and stress disorder, insomnia, and feelings of

⁸ CAT, art. 16.

extreme fear as a result of this government official's efforts to humiliate and harass her.

Conclusion

Since Russia's last periodic review under CAT, some legislative progress has been made to bring the Russian Criminal Code more in line with CAT. However, further progress must be made to effectively end torture and break the cycle of impunity for torturers in Russia. For many segments of the Russian population – gay, lesbian, bisexual, and transgender individuals, those with dissident political opinions, people of color, and women – torture at the hands of (or with the acquiescence of) government authorities continues to be a serious problem. Perpetrators of torture and ill treatment must be brought to justice. Victims of torture must be able to seek redress for the wrongs committed against them. Internationally recognized standards of forensic investigation must be implemented so that torturers can be effectively investigated, documented, and prosecuted. The Russian Federation must fully cooperate to amend the Criminal Code to adequately define torture and indicate appropriate penalties for those who commit torture and must also develop transparent and effective mechanisms to address allegations of torture. Legislation will provide the means to prevent and respond to torture, but political will is also needed to follow through with the commitment to eliminate torture and end impunity.

PHR applauds the efforts of the Committee against Torture to assist state parties in eliminating torture and ill treatment and ending the cycle of impunity for torturers. It is hoped that this report assists the Committee in drafting further recommendations for the Russian Federation to implement in order to end torture.