

**RUSSIAN FEDERATION**

**Fifth Periodic Report on the Implementation of the  
Convention against Torture and other Cruel,  
Inhuman or Degrading Treatment or Punishment**

**Submission from TRIAL (Swiss Association against Impunity)  
to the Committee against Torture**

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## About TRIAL

TRIAL (*Swiss Association against Impunity*) is an association under Swiss law founded in 2002. It is apolitical and non-confessional. One of its principal goals is the fight against impunity of the perpetrators, accomplices and instigators of genocide, war crimes, crimes against humanity and acts of torture.

In this sense, TRIAL:

- ▶ fights against the impunity of the perpetrators and instigators of the most serious international crimes and their accomplices

- ▶ defends the interests of the victims of international crimes and gross human rights violations before Swiss tribunals and international human rights bodies;
- ▶ raises awareness among authorities and the general public regarding the necessity of an efficient national and international justice system for the prosecution of international crimes.

In particular, TRIAL litigates cases before international human rights bodies (UN Treaty bodies and regional courts). TRIAL is active on cases concerning Algeria, Bosnia and Herzegovina, Burundi, Kenya, Libya, Mexico and Nepal.

Moreover TRIAL files criminal complaints on behalf of victims before national courts on the basis of universal jurisdiction.

Since 2011, TRIAL decided to submit alternative reports on different countries to the Committee against Torture and the Committee on the Rights of the Child, with the aim of encouraging these Committees to issue recommendations with respect to the scope of the principle of universal jurisdiction in a more systematic manner.

The organisation enjoys consultative status with the UN Economic and Social Council (ECOSOC).

More information can be found on [www.trial-ch.org](http://www.trial-ch.org).

## **Executive Summary**

The present written submission to the Committee against Torture is for the purpose of the examination of the 5<sup>th</sup> periodic report (CAT/C/RUS/5 of 28 February 2011) of the Russian Federation regarding the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter “Convention against Torture” or “the Convention”), ratified by the Russian Federation on 3 March 1987.

TRIAL is focusing on the system of criminal punishment centered on the use of universal jurisdiction set up by the Convention against Torture in its Articles 4 (in conjunction with Article 1), 5 and 7 of the Convention, with a view to the effective repression of the crime of torture.

A detailed analysis of Russian criminal legislation leads TRIAL to highlight that the legal framework of the State Party is not fully in compliance with the commitments undertaken pursuant to Articles 4 (in conjunction with Article 1), 5 and 7 of the Convention against Torture on the question of criminalization and effective punishment of the crime of torture.

Concerns arise with respect to a number of issues, namely:

- ▶ the lack of an adequate criminalization of torture as an autonomous crime and a deficient definition of

torture with regard to Articles 4 and 1 of the Convention,

- ▶ an inappropriate and ineffective system of penalties and the presence of a very short (10 years) statute of limitations period endangering the effectiveness of the repression system supervised by the Committee against Torture,
- ▶ an establishment and exercise of the different titles of jurisdiction over torture not fully in line with its obligations under Articles 5 and 7 of the Convention.

## **Section 1 - Introduction**

TRIAL appreciates the opportunity to bring to the attention of the Committee against Torture information regarding the implementation of the Convention against Torture in the Russian Federation.

The following section of this report (Section 2) analyzes the provisions of the cooperation system set up by the States Parties to the Convention against Torture in order to ensure an effective prosecution and punishment of torturers. Cornerstones of this system are on the one hand the principle of universal jurisdiction and on the other hand the obligation of *aut dedere aut judicare*.

Section 3 of the report contains an assessment of the implementation of the Russian Federation of some provisions of the Convention against Torture through an analysis of national legislation concerning the criminalization and punishment of the crime of torture.

Section 4 of the report outlines the conclusions of the analysis carried out in the previous section and sets forth a series of recommendations that TRIAL addresses to the Committee in view of the upcoming consideration of the State report.

In line with the mandate of TRIAL, the scope of the present submission is limited to the analysis of the provisions of the Convention against Torture that concern the prohibition of torture and the prosecution and punishment of alleged torturers, in particular pursuant to the principles of universal jurisdiction and *aut dedere aut judicare*. The omission of other subjects from the present document does not imply by any means that TRIAL believes that the Russian Federation fully complies with all its other international obligations under the Convention against Torture.

## **Section 2 - The system for an effective prosecution and punishment of the crime of torture in the Convention against Torture**

The drafters of the Convention against Torture elaborated a criminal cooperation system whose final purpose is to combat impunity for torture and, in particular, to deny safe-haven to persons suspected of having committed acts of torture.

The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has recently expressed concerns regarding the prevalence of impunity as one of the root causes for the

widespread practice of torture and voiced disappointment with respect to the low number of prosecutions for torture.<sup>1</sup>

He highlighted the challenge of effective application of the international legal framework, noting that

“torture occurs because national legal frameworks are deficient [...] Torture persists because national criminal systems lack the essential procedural safeguards to prevent its occurrence, to effectively investigate allegations and to bring perpetrators to justice.”<sup>2</sup>

The Convention against Torture lays out a set of obligations and principles embodied in Articles 4 to 7, whose goal is to facilitate the punishment of torturers by enhancing the prosecution of the offenders through the adoption and exercise of extra-territorial heads of jurisdiction. The basic pillars are:

- ▶ the obligation on State Parties to codify torture as a separate criminal offence in domestic legislation in accordance with the definition of the crime contained in the Convention against Torture itself (Article 4, in conjunction with Article 1),
- ▶ the duty to extradite or prosecute, that is the obligation for the State in the territory of which an alleged torturer is found to prosecute him or to extradite him pursuant to a request made by a State wishing to prosecute him (Article 7); and,
- ▶ the obligation to entrust national courts with the power to establish and exercise a wide scope of jurisdiction over acts of torture, including, under certain circumstances, universal jurisdiction in order to maximize the opportunities to prosecute and punish alleged offenders (Article 5 and 7).

## 2.1 Article 4

The point of departure of the Convention’s repression system is Article 4 which provides for an obligation on States Parties to codify torture as an autonomous offence under domestic legislation - as defined in Article 1 of the Convention<sup>3</sup> - and to attach an appropriately grave penalty to these conducts.

“Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.

Each State Party shall make these offences punishable by appropriate penalties which take into

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<sup>1</sup> Special Rapporteur on Torture, “Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment”, doc. A/65/273 of 10 August 2010, para. 35.

<sup>2</sup> Ibidem, para. 35.

<sup>3</sup> Article 1(1) of the Convention against Torture: “For the purposes of this Convention, torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is 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. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”

account their grave nature.”

Therefore the first step to promote a smooth and effective criminal cooperation among States Parties is to oblige them to make sure that the scope of domestic criminal law covers at least all cases falling within the Convention definition<sup>4</sup> and provide for a punishment in line with the grave nature of the offence.<sup>5</sup>

In its jurisprudence, the Committee against Torture has repeatedly urged States Parties to

“adopt a definition of torture that covers all the elements contained in article 1 of the Convention. [...] The State party should also ensure that acts of torture are not defined in terms of a less serious offence, such as the causing of physical and moral suffering, and that these offences are punishable by appropriate penalties which take into account their grave nature, as set out in article 4, paragraph 2, of the Convention.”<sup>6</sup>

Furthermore in this context the Committee clarified that States should ensure that acts amounting to torture are not subjected to any statute of limitations:

“The State Party should review its rules and provisions on the statute of limitations and bring them fully in line with its obligations under the Convention so that acts of torture, attempts to commit torture, and acts by any person which constitute complicity or participation in torture, can be investigated, prosecuted and punished without time limitations.”<sup>7</sup>

## 2.2 Article 5

Then Article 5 sets out the obligation for national authorities to establish jurisdiction to adjudicate over torture cases. This article obliges States Parties to assert a wide scope of jurisdiction over acts of torture, including instances involving non-nationals committing the crime in third States in case the alleged offender is present in

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<sup>4</sup> J. Herman Burgers and H. Danelius, *The United Nations Convention against Torture. A Handbook on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (Dordrecht, Martinus Nijhoff Publishers, 1988), p. 129.

<sup>5</sup> Conclusions and Recommendations of the Committee against Torture, Kuwait, CAT/C/KWT/CO/2, 28 June 2011, para. 7. See also Conclusions and Recommendations of the Committee against Torture, Ghana, CAT/C/GHA/CO/1, 15 June 2011, para. 9; Conclusions and Recommendations of the Committee against Torture, Turkmenistan, CAT/C/TKM/CO/1, 15 June 2011, para. 8; Conclusions and Recommendations of the Committee against Torture, Jordan, CAT/C/JOR/CO/2, 25 May 2010, para. 9; Conclusions and Recommendations of the Committee against Torture, Moldova, CAT/C/MDA/CO/2, 29 March 2010, para. 14; Conclusions and Recommendations of the Committee against Torture, Chile, CAT/C/CHL/CO/5, 23 June 2009, para. 10.

<sup>6</sup> Conclusions and Recommendations of the Committee against Torture, Kuwait, CAT/C/KWT/CO/2, 28 June 2011, para. 7. See also Conclusions and Recommendations of the Committee against Torture, Turkmenistan, CAT/C/TKM/CO/1, 15 June 2011, para. 8; Conclusions and Recommendations of the Committee against Torture, Bosnia and Herzegovina, CAT/C/BIH/CO/2-5, 20 January 2011, para. 8; Conclusions and Recommendations of the Committee against Torture, Ethiopia, CAT/C/ETH/CO/1, 20 January 2011, para. 9.

<sup>7</sup> Conclusions and Recommendations of the Committee against Torture, Jordan, CAT/C/JOR/CO/2, 25 May 2010, para. 9. See also Conclusions and Recommendations of the Committee against Torture, Sweden, CAT/C/SWE/CO/5, 4 June 2008, para. 10; Conclusions and Recommendations of the Committee against Torture, Denmark, CAT/C/DNK/CO/5, 16 July 2007, para. 11.

their territory.

The first paragraph of Article 5 requires each State Party to provide for territorial and active nationality jurisdiction over torture and permits the establishment of passive personality jurisdiction, if the State deems it appropriate:

“Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 4 in the following cases:

1. When the offences are committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State;
2. When the alleged offender is a national of that State;
3. When the victim was a national of that State if that State considers it appropriate.”

Article 5, paragraph 2 establishes a further title of mandatory jurisdiction:

“Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him pursuant to article 8 to any of the States mentioned in Paragraph 1 of this article.”

Article 5 therefore contains the obligation to establish universal jurisdiction<sup>8</sup>, in particular under the form of *forum deprehensionis* (also called conditional universal jurisdiction), meaning that States have the obligation to establish their jurisdiction when the alleged torturers are present in a territory under their jurisdiction, regardless of their nationality, the nationality of the victim and the place where the crime was committed.<sup>9</sup>

Among others, in its Concluding Observations on Nepal in 2007 the Committee against Torture stated that it “regrets the absence of universal jurisdiction in domestic legislation for acts of torture” and recommended that the State

“take the necessary measures to ensure that acts of torture are made subject to universal jurisdiction under the draft Criminal Code, in accordance with article 5 of the Convention”.<sup>10</sup>

The Committee has also expressed concerns regarding limitations on the scope of universal jurisdiction

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<sup>8</sup> In general terms universal jurisdiction is the capacity or competence of a State to exercise jurisdiction over a specific crime where none of the traditional jurisdictional nexus exists. (i.e. territorial, nationality, passive personality, or protective jurisdiction).

<sup>9</sup> Conclusions and Recommendations of the Committee against Torture, Sri Lanka, CAT/C/LKA/CO/2, 15 December 2005, para. 10.

<sup>10</sup> Conclusions and Recommendations of the Committee against Torture, Nepal, CAT/C/NPL/CO/2, 13 April 2007, para 18. See also Concluding Observations of the Committee against Torture, Ukraine, A/57/44, 21 November 2001, para 5(d); Conclusions and Recommendations of the Committee against Torture, Uganda, CAT/C/CR/34/UGA, 21 June 2005, para 5 (c); Conclusions and Recommendations of the Committee against Torture, Democratic Republic of Congo, CAT/C/DRC/CO/1, 1 April 2006, para 5(b); Conclusions and Recommendations of the Committee against Torture, South Africa, CAT/C/ZAF/CO/1, 7 December 2006, para 17; Conclusions and Recommendations of the Committee against Torture, Benin, CAT/C/BEN/CO/2, 19 February 2008, para 15; Concluding Observations of the Committee against Torture, Indonesia, CAT/C/IDN/CO/, 2 July 2008, para 29.

provisions, such as the French legislative requirement that the suspect be normally resident in France<sup>11</sup>, the double criminality requirement present in the former Yugoslav Republic of Macedonia (FYROM) and Kazakhstan domestic law<sup>12</sup> or also the lack of independence of the national authorities in charge of triggering universal jurisdiction criminal proceedings.<sup>13</sup>

### 2.3 Article 7

Article 7 is intrinsically linked with and logically complements Article 5 by laying out the obligation to exercise jurisdiction and actually prosecute torture offences. Notably, the provision mandates the exercise of jurisdiction in any case where an alleged torturer is present in a territory under the jurisdiction of a State Party and is not extradited.

The first paragraph of Article 7 provides that any State Party which does not extradite a person found in a territory under its jurisdiction alleged to have committed torture must submit the case to the competent authorities for the purpose of prosecution<sup>14</sup>.

This principle is known as the duty to extradite or prosecute (also called the *aut dedere aut iudicare* rule).

Since torturers may well escape prosecution by the authorities of the State in whose territory they committed their crimes<sup>15</sup>, the obligation to extradite or prosecute alleged criminals who are found in the territory under another State's jurisdiction represents an extraordinarily effective criminal cooperation tool in order to combat impunity.

The purpose of Article 7 is thus to create a web of jurisdiction without loopholes using universal jurisdiction in a remedial manner where other heads of jurisdiction may not be available.

The Committee against Torture repeatedly highlighted the importance of the duty to extradite or prosecute coupled with the principle of universal jurisdiction:

“The State Party should establish its jurisdiction over acts of torture in cases where the alleged

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<sup>11</sup> Conclusions and Recommendations of the Committee against Torture: France, CAT/C/FRA/CO/4-6, 20 May 2010, para 19.

<sup>12</sup> Conclusions and Recommendations of the Committee against Torture: FYROM, CAT/C/MKD/CO/2, 21 May 2008, para 11. See also Conclusions and Recommendations of the Committee against Torture: Kazakhstan, CAT/C/KAZ/CO/2, 12 December 2008, para 19.

<sup>13</sup> Conclusions and Recommendations of the Committee against Torture: Portugal, CAT/C/PRT/CO/4, 19 February 2008, para 10.

<sup>14</sup> Article 7(1) of the Convention against Torture: “The State Party in territory under whose jurisdiction a person alleged to have committed any offence referred to in article 4 is found, shall in the cases contemplated in article 5, if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution”.

<sup>15</sup> It is certainly true that in an ideal world it would be almost always better for the trial to take place in the territorial State, but the very reason States exercise or seek to exercise universal jurisdiction is because the territorial State has failed to fulfill its obligations under international law to investigate and, if there is sufficient admissible evidence, to prosecute the suspect of torture.



offender is present in any territory under its jurisdiction, either to extradite or prosecute him or her, in accordance with the provisions of the Convention.”<sup>16</sup>

Notably, the obligation for the forum State to prosecute the alleged offender applies even in the absence of any extradition request.<sup>17</sup> Extradition is an option only if a request has been made and such extradition is not contrary to international law.<sup>18</sup> Otherwise, the State must start with the prosecution of the alleged offender.

In the case of *Suleymane Guengueng et al. v. Senegal*,<sup>19</sup> the Committee found Senegal to be in violation of Article 7 of the Convention, in relation to the failure by Senegalese courts to prosecute or extradite Mr. Hissène Habré, the former President of Chad accused of acts of torture in Chad. In the absence of a request for extradition being made at the time when the complainants submitted their claim in January 2000, Senegal did not prosecute Mr Habré and that contravened Senegal obligation pursuant to Article 7. The Committee was clear in setting out that

“the obligation to prosecute the alleged perpetrator of acts of torture does not depend on the prior existence of a request for his extradition. The alternative available to the State party under article 7 of the Convention exists only when a request for extradition has been made and puts the State party in the position of having to choose between (a) proceeding with extradition or (b) submitting the case to its own judicial authorities for the institution of criminal proceedings, the objective of the provision being to prevent any act of torture from going unpunished”.<sup>20</sup>

Assessing Sri Lankan legislation compatibility with the standards set by the Convention against Torture, the Committee recently considered that domestic law

“appears to require the rejection of an extradition request before the requirement that the case be submitted to the relevant authorities. The Committee recalls its jurisprudence on the content of the obligation to extradite or prosecute (*aut dedere, aut judicare*), that the State party’s obligation to prosecute the alleged perpetrator of acts of torture does not depend on the prior existence of a request for extradition”.<sup>21</sup>

In the following sections, this report will assess the compatibility of Russian legislation with the mentioned provisions of the Convention against Torture.

<sup>16</sup> Conclusions and Recommendations of the Committee against Torture, Bulgaria, CAT/C/BGR/CO/4-5, November 2011, para. 17. See also Conclusions and Recommendations of the Committee against Torture, Indonesia, CAT/C/IDN/CO/2, 2 July 2008, para. 29; Conclusions and Recommendations of the Committee against Torture, Italy, CAT/C/ITA/CO/4, 16 July 2007, para. 14.

<sup>17</sup> J. Herman Burgers and H. Danelius, *The United Nations Convention against Torture. A Handbook on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (Dordrecht, Martinus Nijhoff Publishers, 1988), p. 137.

<sup>18</sup> M. Nowak, E. McArthur, *The United Nations Convention Against Torture: A Commentary*, Oxford University Press, 2008.

<sup>19</sup> CAT, *Suleymane Guengueng et al v Senegal*, CAT/C/36/D/181/2001, 19 May 2006.

<sup>20</sup> *Ibidem*, para. 9.7. The Committee found also a separate contravention of Article 7 from the time that Belgium issued its extradition request, on 19 September 2005, for the refusal of Senegal to comply with the extradition request.

<sup>21</sup> Conclusions and Recommendations of the Committee against Torture, Sri Lanka, CAT/C/LKA/CO/3-4, 23 November 2011, para. 26.

## Section 3 - Implementation of the Convention against Torture's repression system in Russian Law

### 3.1 Criminalization of Torture under Russian Law

The Constitution of the Russian Federation clearly provides in Article 21 that “No one shall be subjected to torture, violence or other cruel or degrading treatment or punishment”<sup>22</sup>.

Despite torture being explicitly prohibited by the Russian Code of Criminal Procedure<sup>23</sup>, substantive criminal law did not contain any legal definition nor criminalisation of torture until the early 2000's.<sup>24</sup>

Only Article 117 of the Russian Federation Criminal Code (hereinafter “RFCC”), dealing with the punishment of “the infliction of physical or mental suffering by means of systematic beating or by any other violent means”<sup>25</sup>, provided in paragraph 2(e) “the use of torture” as an aggravating circumstance for the above-mentioned offence but without laying down any definition of torture whatsoever.

Then, pursuant to Federal Act No. 162-FZ of 8 December 2003 amending and supplementing the RFCC, a note to Article 117 was added containing the following definition of torture:

“The term ‘torture’ in the present Article and other Articles of the present Code shall be understood to mean the infliction of physical or mental suffering for the purpose of coercing the victim to provide testimony or to perform other actions contrary to his or her will, for the purpose of punishment or for other purposes.”<sup>26</sup>

It thus appears that Article 117 of the Criminal Code now contains a definition of torture which, according to Russian authorities, ensure “legal certainty with respect to [...] cases involving the use of torture” and “is in compliance with article 1 of the Convention”.<sup>27</sup>

Beyond this Article, there are other two provisions of the RFCC addressing conducts which might be classified as acts of torture.

The first one is Article 286(3(a)) providing that State agents are to be held responsible for abuse of official

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<sup>22</sup> Article 21(2) of the Russian Constitution, 13 December 1993.

<sup>23</sup> Article 9 of Russian Code of Criminal Procedure: “No one of the participants in criminal court proceedings shall be subjected to violence or torture or to other kinds of cruel or humiliating treatment, degrading his human dignity”.

<sup>24</sup> 3rd Periodic Report of the Russian Federation to CAT, CAT/C/34/Add.15, 15 October 2001, para. 8.

<sup>25</sup> Article 117 of the Russian Federation Criminal Code (RFCC), Federal Act No. 63-FZ of June 13, 1996 (as amended and integrated by several subsequent acts).

<sup>26</sup> Federal Act No. 162-FZ of 8 December 2003, amending, *inter alia*, Article 117 of the Russian Federation Criminal Code (RFCC), Federal Act No. 63-FZ of June 13, 1996.

<sup>27</sup> 5th Periodic Report of the Russian Federation to CAT, CAT/C/RUS/5, 28 February 2011, para. 2.

powers “with the use of violence or with the threat of its use”<sup>28</sup>.

The second provision is Article 302(2), which determines liability for coercion of a suspect, defendant, victim or witness to testify or of an expert to give a certain report through the use of threats, blackmail or other unlawful acts by an investigator or a person conducting an initial inquiry (or by any other person acting with the express or tacit consent of the investigator or the person conducting the initial inquiry), when accompanied by the “use of violence, mockery, or torture”.<sup>29</sup>

None of the above-mentioned provisions establishes an autonomous offence of torture nor they provide for a definition of the conduct in line with Article 4, read in conjunction with Article 1, of the Convention against Torture.

First of all, the three provisions dealing with torture under Russian criminal law considered torture merely as an aggravating circumstance; as a consequence it means that torture is not *de facto* regarded as a criminal offence *per se*.

In Article 117(2)(e) RFCC, torture represents an aggravating circumstance of the principal offence criminalized in the Article itself, that is “infliction of physical or mental suffering by means of systematic beating or by any other violent means”.

In Article 286(3(a)) RFCC, the “use of violence or the threat of its use” by State agents is deemed as an aggravating circumstance of their abuse of official powers.

In Article 302(2) RFCC, the “use of torture” is considered as an aggravating circumstance of the principal offence, namely coercion to testify.

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<sup>28</sup> Article 286(3(a)) of the RFCC, Federal Act No. 63-FZ of June 13, 1996: “Commission by an official of actions which transcend the limits of his powers and which involve a substantial violation of the rights and lawful interests of individuals or organisations, or the legally-protected interests of society and the State, shall be punishable by a fine in the amount up to 80 thousand roubles, or in the amount of the wage or salary, or any other income of the convicted person for a period up to six months, or by disqualification to hold specified offices or to engage in specified activities for a term of up to five years, or by arrest for a term of four to six months, or by deprivation of liberty for a term of up to four years. [...]

3. Deeds stipulated by the first or second part of this Article, if they have been committed: a) with the use of violence or with the threat of its use; b) with the use of arms or special means; c) with the infliction of grave consequences, shall be punishable by deprivation of liberty for three to ten years, with disqualification to hold specified offices or to engage in specified activities for a term of up to three years.

<sup>29</sup> Article 302 of the RFCC, as amended by Federal Act No. 162-FZ of 8 December 2003: “1. Compulsion to give evidence used with regard to a subject, defendant, victim, or witness, or coercion of an expert, a specialist to make a report or to give evidence through the application of threats, blackmail, or other illegal actions, by an investigator or a person conducting inquests, as well as by other person with the knowledge or a tacit consent of the investigator or the person conducting inquests, shall be punishable by deprivation of liberty for a term of up to three years.

2. The same act, joined with the use of violence, mockery, or torture, shall be punishable by deprivation of liberty for term of two to eight years.

The Committee against Torture repeatedly noticed that the conditions established in Articles 1 and 4 of the Convention are not matched by the designation of torture merely as an aggravating circumstance. In its Concluding Observations on Colombia of 2010 for example, the Committee considered domestic legislation inadequate as

“in practice, a charge relating to crimes of torture does not clearly identify torture as a specific and separate offence, given that it is subsumed under aggravating circumstances relating to other offences regarded as more serious by judicial officials”.<sup>30</sup>

Secondly, in light of the lack of a specific provision defining torture as an autonomous criminal offence, conducts falling within the concept of torture as defined by the Convention are currently dealt with by Russian Courts through reference to minor or related crimes.

This is the reason why the official statistics reported in the governmental submission about prosecution and punishment conducted on the basis of Articles 117, 286 and 302 of the RFCC<sup>31</sup> cannot properly assess the actual incidence of torture.

In this respect the Committee consistently held that torture should not be downgraded and condemned under the discipline of less serious criminal offences, such as, in this specific case, “abuse of official powers”. In its already quoted Concluding Observations on Colombia, the Committee declared its concern

“about the possibility of erroneous definitions that assimilate the crime of torture to other less serious criminal offences such as that of personal injury, which does not require proof of the offender’s intention. The Committee is concerned that these practices result in a serious under-recording of cases of torture and entail impunity for the said crimes”.<sup>32</sup>

The Committee also underlined that by naming and defining the offence of torture as required by the Convention and making that offence clearly different from other crimes the State parties will

“directly advance the Convention’s overarching aim of preventing torture by, inter alia, alerting everyone, including perpetrators, victims and the public, to the special gravity of the conduct”.<sup>33</sup>

Downgrading torture does not only understate the depth of the problem but it also leads to a different method of investigation and punishment which clearly contravenes the purpose of the Convention setting out a strict

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<sup>30</sup> Concluding Observations of the Committee Against Torture, Colombia, 4 May 2010, CAT/C/COL/CO/4, para. 10. See also Conclusions and Recommendations of the Committee against Torture, Russian Federation, CAT/C/CR/28/4, 6 June 2002, para. 6(a).

<sup>31</sup> 5th Periodic Report of the Russian Federation to CAT, CAT/C/RUS/5, 28 February 2011, para. 14-22.

<sup>32</sup> Conclusions and Recommendations of the Committee against Torture, Turkmenistan, CAT/C/TKM/CO/1, 15 June 2011, para. 8. See also Concluding Observations of the Committee Against Torture, Colombia, 4 May 2010, CAT/C/COL/CO/4, para. 10.

<sup>33</sup> Concluding Observations of the Committee Against Torture, Syrian Arab Republic, 20 May 2010, CAT/C/SYR/CO/1, para. 5. See also Concluding Observations of the Committee Against Torture, France, 20 May 2010, CAT/C/FRA/CO/4-6, para. 13.

definition of torture and attaching specially grave consequences.<sup>34</sup>

### 3.2 Shortcomings in the definition of torture under Russian law

Article 117 of the RFCC represents the sole provision actually laying out a legal definition of torture.

Analysing its wording, it is evident that this provision falls far short of international standards as reflected in Articles 1 and 4 of the Convention on at least a couple of issues.

On the one hand, Article 117 does not require the involvement of a public official or other person acting in an official capacity in the commission of torture. It is therefore applicable to normal citizens and not specifically to State agents.

This notion of torture is not in conformity with international law. The key characteristic distinguishing torture as a gross violation of human rights from other kinds of physical abuses against an individual is the presence of at least some involvement of a State official.

According to Article 1 of the Convention against Torture:

*“torture means any act by which severe pain or suffering [...] is intentionally 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”*. [emphasis added]

This consideration is in line with the whole purpose of the international law prohibition of torture contained in the Convention against Torture<sup>35</sup>: private conduct is normally punished under national criminal law, therefore international concern arises where atrocities have official sanction.

Against this background it is clear that the definition found in Article 117 is not adequately tailored to cover torture as envisioned in the Convention against Torture.

The Report by the State Party enumerates the scores of convictions under Article 117(2(e))<sup>36</sup> but it is clear that most of them concern private individuals and only a marginal handful of cases address State officials.<sup>37</sup>

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<sup>34</sup> See for instance Article 15 of the CAT on the obligation of the inadmissibility of confessions extracted through torture as evidence.

<sup>35</sup> J. Herman Burgers and H. Danelius, *The United Nations Convention against Torture. A Handbook on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (Dordrecht, Martinus Nijhoff Publishers, 1988), p. 120.

<sup>36</sup> 5th Periodic Report of the Russian Federation to CAT, CAT/C/RUS/5, 28 February 2011, para. 18-20.

<sup>37</sup> In this respect see ECtHR, *Micheyev v Russia*, Judgment of 26 January 2006, para. 101: “Between 2000 and 2004 the State prosecution service had brought five cases under Article 117 § 2 (torture) against officials of the law-enforcement agencies, four of which had gone before the courts”; see also Amnesty International Briefing to the Committee against Torture for the review of Russian 4th Report, AI Index: EUR 46/014/2006, p. 19: “Amnesty International is not aware of cases where State officials have been convicted of torture under Article 117”.

On the other hand Article 117 RFCC does not spell out all the specific purposes provided for under the Convention to characterize the relevant conduct as torture and distinguish it from other related offences.

Pursuant to Article 117, the infliction of physical or mental suffering falls under the purview of torture if it is carried out “for the purpose of coercing the victim to provide testimony or to perform other actions contrary to his or her will, for the purpose of punishment or for other purposes”.<sup>38</sup>

Article 1 of the Convention defines the specific purpose for which the suffering is caused as an essential element of the definition of torture and it sets out a list of purposes<sup>39</sup>:

- ▶ obtaining from the victim or a third person information or a confession
- ▶ punishing the victim for an act he or a third person has committed or is suspected of having committed
- ▶ intimidating or coercing the victim or a third person,
- ▶ for any reason based on discrimination of any kind.

States Parties have the obligation to comprehensively account in national criminal legislation for all these different purposes, therefore coming to a sensible distinction between acts of torture and acts of assault or other cruel and degrading treatment.

In this respect Russian criminal law is defective because it sets forth a definition of torture that is more limited in scope than the definition embodied in Article 1 of the Convention as it covers only some of the purposes envisaged therein.

In particular, as already pointed out by the Committee against Torture<sup>40</sup>, the RFCC definition does not address acts aimed at coercing a third person as torture and fails to mention such purposes as intimidation or discrimination.

Turning our analysis to the other two provisions under whose purview acts of torture may fall in Russian criminal law, that is Article 286(3(a)) (abuse of official powers) and Article 302(2) (coercion to testify), their specific wording can by no means represent an adequate implementation of the stringent definition embodied in the Convention.

On the one hand Article 302 does not cover torture employed by an official without the knowledge and consent of the investigator or the person conducting the investigation and it fails to include acts of torture whose

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<sup>38</sup> 5th Periodic Report of the Russian Federation to CAT, CAT/C/RUS/5, 28 February 2011, para. 1.

<sup>39</sup> The drafting history of the Convention and the actual wording indicate that the various listed purposes do not constitute an exhaustive list, see A. Boulesbaa, *The UN Convention on Torture and the Prospects of Enforcement*, Martinus Nijhoff Publishers, 1999, p. 21.

<sup>40</sup> Conclusions and Recommendations of the Committee against Torture, Russian Federation, CAT/C/RUS/CO/4, 6 February 2007, para 7; see also Submission of NGOs on legal remedies for grave human rights violations to be created in the Northern Caucasus region to the Committee on Legal Affairs and Human Rights of the Council of Europe, 8 February 2008, para. 21.

purpose is not obtaining evidence or expert opinion in the framework of a criminal investigation.

On the other hand Article 286 has a broader scope but it does not mention torture nor explicitly make any qualitative difference between torture acts and lower and less serious degrees of abuse of power.

### 3.3 Punishment for Torture under Russian Law

The chaotic and deficient state of affairs with respect to the definition of torture cannot but badly affect the certainty and effectiveness of penalties attached thereto.

The three different provisions of the Russian Criminal Code under which acts of torture may fall set out different ranges of penalties:

- ▶ Article 117(2)(e) of RFCC provides for sanctions ranging from 3 to 7 years of deprivation of liberty.<sup>41</sup>
- ▶ Article 286(3(a)) of RFCC provides for sanctions ranging from 3 to 10 years coupled with disqualification to hold specific offices or to engage in specific activities for a term of up to 3 years.<sup>42</sup>
- ▶ Article 302(2) of RFCC provides for sanctions ranging from 2 to 8 years of deprivation of liberty.<sup>43</sup>

As previously pointed out, Article 117 has mostly been used to punish sufferings inflicted by private individuals rather than public officials.<sup>44</sup> The limited scope of Article 302 has limited the instances of torture adjudicated through this avenue.<sup>45</sup>

Therefore in practice most of the acts of torture committed by public representatives have thus far been criminally prosecuted through Article 286. But the lack of a clear boundary in this Article between torture and other less grievous types of misconduct brought about a situation whereby torture is not perceived as more dangerous to society than any other type of official abuse of power, not necessarily involving violence.

As a result sentencing for torture has systematically been just as severe - and at times less severe - than punishment for other types of official abuse.<sup>46</sup> This result puts into question the propriety of the above-said penalties to act as a coherent and effective deterrent against torture-related acts.

Recalling that adequately harsh penalties are indispensable in order to have a successful preventive effect, it is to be recommended that, alongside with the adequate modification of the definition of torture, Russian Federation tighten its Criminal Code provisions to make acts of torture punishable by "appropriate penalties

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<sup>41</sup> Article 117 of the Russian Federation Criminal Code (RFCC), Federal Act No. 63-FZ of June 13, 1996 (as amended and integrated by several subsequent acts).

<sup>42</sup> Article 286(3(a)) of the RFCC, Federal Act No. 63-FZ of June 13, 1996.

<sup>43</sup> Article 302 of the RFCC, as amended by Federal Act No. 162-FZ of 8 December 2003.

<sup>44</sup> 4th Periodic Report of the Russian Federation to CAT, CAT/C/55/Add.11, 8 April 2005, para. 30-35.

<sup>45</sup> 5th Periodic Report of the Russian Federation to CAT, CAT/C/RUS/5, 28 February 2011, para. 15 and 22.

<sup>46</sup> Russian NGO Shadow Report to the CAT on the Observance of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by the Russian Federation for the period from 2001 to 2005, May 2006, para. 4.17-4.20.



which take into account their grave nature<sup>47</sup>.

### 3.4 Statute of limitation for Torture under Russian Law

According to Article 78 of the Russian Federation Criminal Code, the length of the statute of limitations for a certain crime depends on the gravity of the crime itself. More precisely, a 2-year limitation period applies to “crimes of small gravity”, a 6-year limitation period applies to “crimes of average gravity”, a 10-year limitation period applies to “grave crimes” and a 15-year limitation period applies to “especially grave crimes”.<sup>48</sup>

A categorisation of crimes in this respect is set out in Article 15 of the Criminal Code. For our purposes, torture is classified as being a “grave crime”.<sup>49</sup> Torture offences thus carry a limitation period of 10 years.

This situation is in direct contravention to the Convention against Torture. The Committee against Torture has consistently held that acts of torture are not to be subject to any statute of limitations<sup>50</sup> and has therefore repeatedly called States Parties to amend their criminal law provisions with a view to abolishing the statute of limitation for the crime of torture.<sup>51</sup>

In its Concluding Observations on Jordan legislation, the Committee recommended that:

“The State Party should further review its rules and provisions on the statute of limitations and bring them fully in line with its obligations under the Convention so that acts of torture, attempts to commit torture, and acts by any person which constitute complicity or participation in torture, can be investigated, prosecuted and punished without time limitations.”<sup>52</sup>

According to the Concluding Observations on the report by Liechtenstein, “no justification for imposing time limits on the obligation of the State party to investigate and prosecute crimes of torture [...] is acceptable”.<sup>53</sup> Despite the ratification by Russia of the CAT and of the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity<sup>54</sup>, torture is still subject to the above-mentioned

<sup>47</sup> Conclusions and Recommendations of the Committee against Torture, Jordan, CAT/C/JOR/CO/2, 25 May 2010, para. 9; Conclusions and Recommendations of the Committee against Torture, Liechtenstein, CAT/C/LIE/CO/3, 20 May 2010, para. 8; Conclusions and Recommendations of the Committee against Torture, Mauritius, CAT/C/MUS/CO/3, 15 June 2011, para. 8.

<sup>48</sup> Article 78 of the RFCC, Federal Act No. 63-FZ of June 13, 1996.

<sup>49</sup> Article 15(4) of the RFCC, Federal Act No. 63-FZ of June 13, 1996.

<sup>50</sup> Conclusions and Recommendations of the Committee against Torture, Finland, CAT/C/FIN/CO/5-6, 29 June 2011, para 7; Conclusions and Recommendations of the Committee against Torture, Turkmenistan, CAT/C/TKM/CO/1, 15 June 2011, para 8; Conclusions and Recommendations of the Committee against Torture, Jordan, CAT/C/JOR/CO/2, 25 May 2010, para. 9.

<sup>51</sup> Conclusions and Recommendations of the Committee against Torture, Slovenia, CAT/C/SVN/CO/3, 20 June 2010, para. 7; Conclusions and Recommendations of the Committee against Torture, Chile, CAT/C/CHL/CO/5, 23 June 2009, para 10.

<sup>52</sup> Conclusions and Recommendations of the Committee against Torture, Jordan, CAT/C/JOR/CO/2, 25 May 2010, para. 9; Conclusions and Recommendations of the Committee against Torture, Sweden, CAT/C/SWE/CO/5, 4 June 2008, para. 10; Conclusions and Recommendations of the Committee against Torture, Denmark, CAT/C/DNK/CO/5, 16 July 2007, para 11.

<sup>53</sup> Conclusions and Recommendations of the Committee against Torture, Liechtenstein, CAT/C/LIE/CO/3, 25 May 2010, para. 7.

<sup>54</sup> Ratified by the Russian Federation on 22 April 1969.



statute of limitations whose effects are dangerously visible in a number of recent decisions on the matter.<sup>55</sup>

In light of the clear international legal obligations pending on Russia and the current short time-frame foreseen by Russian legislation, it is urgently to be recommended that Russia enact a statute to amend its criminal law in order to ensure that no time limitations apply to torture offences.

### 3.5 Jurisdiction over Torture under Russian Law

Articles 11 and 12 of the Russian Federation Criminal Code establish different titles of criminal jurisdiction.

Articles 11 deals with the principle of territorial jurisdiction providing Russian courts with jurisdiction when offences are committed in the territory of the Russian Federation, on board a ship registered in a port of the Russian Federation or on board a warship or in a military aircraft of the Russian Federation.<sup>56</sup> Article 12 then sets out the active personality and the universality titles of jurisdiction.

First, Article 12(1) provides jurisdiction over Russian citizens and stateless persons permanently resident in the Russian Federation who have committed crimes abroad, if that conduct was a crime under the law of the territorial State and provided that they had not been convicted in that State.<sup>57</sup> This represents the active nationality principle, extended to stateless persons who have become permanent resident of the Russian

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<sup>55</sup> See for instance the procedural step taken following the ECtHR judgment of 5 February 2009 in the *Khadisov and Tsechoyev v Russia* case. This is a torture case in which the two applicants were tortured for five days at Khankala military base in September 2001 and a preliminary investigation had established the identities of the commanders involved in their detention before being transferred to military prosecutors and soon discontinued. After the finding of a violation of Article 3 ECHR in both its substantive and procedural aspects, the applicants submitted two motions requesting the Investigating Department of the Ingush Republic to sanction familiarization with all case materials and to undertake a series of investigative measures. The latter informed the Applicant's counsel on 7 May 2010 that the investigation into the Applicant's case had been terminated because the statute of limitations for criminal prosecution had run out. Therefore, the request to undertake measures in accordance with the judgment of the ECtHR had been dismissed, in 'Communication from the representatives of the applicants in 3 cases of the Khashiyev group against the Russian Federation' (Application No. 57942/00), 19 November 2010, para. 72-77.

<sup>56</sup> Article 11, paragraphs 1, 2 and 3 of the RFCC, Federal Act No. 63-FZ of June 13, 1996:

"1. Any person who has committed a crime in the territory of the Russian Federation shall be brought to criminal responsibility under this Code.

2. Crimes committed within the limits of the territorial waters or the air space of the Russian Federation shall be deemed to have been performed in the territory of the Russian Federation. The validity of this Code shall also be extended to offences committed on the continental shelf and in the exclusive economic zone of the Russian Federation.

3. A person who has committed a crime on board a ship registered in a port of the Russian Federation and to or on one on the open sea or in the air space outside the confines of the Russian Federation shall be brought to criminal responsibility under this Code, unless otherwise stipulated by an international agreement of the Russian Federation. Under this Code, criminal responsibility shall also be borne by a person who has committed an offence on board a warship or in a military aircraft of the Russian Federation, regardless of the place of their location."

<sup>57</sup> Article 12, paragraph 1 of the RFCC, Federal Act No. 63-FZ of June 13, 1996: "1. Citizens of the Russian Federation and stateless persons who permanently reside in the Russian Federation and who have committed crimes outside the boundaries of the Russian Federation shall be brought to criminal responsibility under this Code, if their deeds have been recognized as crimes in the State on whose territory they were committed, and unless these persons have been convicted in the foreign State. In case of conviction of said persons, the punishments may not exceed the upper limit of the sanction provided for by the laws of the foreign State on whose territory the crimes have been committed."

Federation, but with the double jeopardy limitation.<sup>58</sup>

Article 12(2) confers active nationality jurisdiction over acts committed wherever in the world by servicemen of the military units of the Russian Federation, without the criterion of double jeopardy<sup>59</sup>.

Finally Article 12(3) gives Russian courts universal jurisdiction over foreign citizens and stateless persons not permanently resident in the Russian Federation for crimes committed outside Russian territories that run counter to the interests of the Russian Federation and in cases provided for by an international agreement to which Russia is a Party, as long as the suspects have not been convicted of such conduct in another State.<sup>60</sup>

The wording of Article 12(3) clearly shows that Russian judicial authorities are entrusted with universal jurisdiction in two alternative cases: in the case of a crime which runs counter to the interests of the Russian Federation and in the case of a crime whose punishment under universal jurisdiction is sanctioned by an international agreement to which Russia is a party.

The second prong of the Article manifestly concerns the Convention against Torture, which has been duly ratified by Russia and which provides in Articles 5(2) and 7 the obligation to establish and exercise universal jurisdiction over torture offences.

Letting aside for a moment the preliminary problems concerning the proper definition of the crime of torture in Russian criminal law (without which every discourse on jurisdiction stands on frail grounds), on the face of it Russian Criminal Code fulfils the jurisdictional obligations set forth in Article 5 of the Convention providing for territorial, active and universal jurisdiction (the adoption of the passive personality title constituting only a faculty and not an obligation under the Convention). Yet, taking a closer look at the wording of these provisions and the overall context in which they operate, a couple of issues arise and call for further attention on the part of the State Party.

The first concern regards the active nationality principle. Despite being commendably enlarged to cover stateless persons permanently residing in the territory of Russian Federation, Article 12(1) of the Criminal Code makes the establishment of this title of jurisdiction dependent on the double jeopardy criterion, that is the

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<sup>58</sup> The 'double jeopardy' principle is a jurisdictional criterion according to which the crime committed abroad can be prosecuted only if the underlying acts are also a crime in the State where they were committed.

<sup>59</sup> Article 12, paragraph 2 of the RFCC, Federal Act No. 63-FZ of June 13, 1996: "2. Servicemen of the military units of the Russian Federation located beyond the confines of the Russian Federation shall bear criminal responsibility for their crimes committed in the territories of foreign States under this Code, unless otherwise stipulated by international agreements of the Russian Federation."

<sup>60</sup> Article 12, paragraph 3 of the RFCC, Federal Act No. 63-FZ of June 13, 1996: "3. Foreign nationals and stateless persons who do not reside permanently in the Russian Federation and who have committed their crimes outside the boundaries of the Russian Federation shall be brought to criminal responsibility under this Code in cases in which the crimes run counter to the interests of the Russian Federation, and in cases provided for by international agreement of the Russian Federation, and unless they have been convicted in a foreign State and are brought to criminal responsibility in the territory of the Russian Federation."

requirement that the conduct be a crime in the territorial State as well.

This limitation is contrary to the Russian Federation's obligations under Articles 5 and 7 of the Convention against Torture<sup>61</sup> and should be removed.

The second remark relates more broadly to the failure of Russian authorities to take all the "measures as may be necessary to establish [...] [their] jurisdiction" over the widespread, ongoing and consistent allegations of acts of torture and other cruel, inhuman or degrading treatment or punishment committed by Russian law enforcement personnel<sup>62</sup>.

Clearly it is not sufficient for Russia to rely on legislation in its books to fulfil the requirements of Article 5 of the Convention. It is also necessary that such legislation is properly implemented through judicial and executive measures as required by the Convention.

The lack of effective prosecution of public officials allegedly responsible of torture-related offences may in part be the consequence of the failure to directly enforce international law by Russian courts. Despite the fact that the Russian Constitution explicitly recognizes that international law is part of the Russian domestic legal system<sup>63</sup> and that Russian Constitutional Court has repeatedly confirmed this state of affairs<sup>64</sup>, lower Russian courts have been much more reluctant and conservative.

With respect to the Convention against Torture, if in the late 1990's the Russian delegation admitted to the Committee that "the principle of the primacy of those [international] norms over domestic law was not yet universally accepted in the Russian Federation" and that it "was unable to cite a specific example of those norms actually being invoked in the courts",<sup>65</sup> the most recent report by the State Party confirms that "there have been no cases in practice in which the provisions of the Convention have been directly applied by a court".<sup>66</sup>

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<sup>61</sup> See above note 18 on the Committee against Torture expressing concerns over the limitation represented by the criterion of double jeopardy in establishing jurisdiction over torture offences.

<sup>62</sup> Human Rights Watch, "Widespread Torture in the Chechen Republic". Human Rights Watch Briefing Paper for the 37th Session UN Committee against Torture, 13 November 2006; Amnesty International, "Russia: human rights briefing", 12 September 2011, at [http://www.amnesty.org.uk/news\\_details.asp?NewsID=19681](http://www.amnesty.org.uk/news_details.asp?NewsID=19681); L. Alexandrova, "Torture has become standard practice in Russian police", Itar-Tass World Service, 28 March 2012; "UN Official Slams Russia on Magnitsky Case", The Moscow Times, 28 March 2012; "Avalanche of torture complaints hits Russian police", AFP, 2 April 2012.

<sup>63</sup> Article 15(4) of the Russian Constitution: "The universally-recognized norms of international law and international treaties and agreements of the Russian Federation shall be a component part of its legal system. If an international treaty or agreement of the Russian Federation fixes other rules than those envisaged by law, the rules of the international agreement shall be applied."

<sup>64</sup> See for instance Constitutional Court, Chechnya case, 31st July 1995. An unofficial English translation of the judgement was published by the European Commission for Democracy through Law of the Council of Europe, CDL-INF (96) 1.

<sup>65</sup> CAT, Summary records of the 265th meeting, 12 November 1996, U.N. Doc. CAT/C/SR.265, 27 January 1997, paras 17-18

<sup>66</sup> 5th Periodic Report of the Russian Federation to CAT, CAT/C/RUS/5, 28 February 2011, para. 11.

Another problematic aspect is represented by the lack of effective investigation mechanisms, in violation of Article 12 of the Convention Against Torture. The absence of effective investigation into complaints of torture and ill-treatment committed by Russian public officials has been repeatedly criticised by the European Court of Human Rights<sup>67</sup>, international and national NGOs<sup>68</sup> and the Committee against Torture itself<sup>69</sup>.

In this respect the main shortcomings have been highlighted as being not legislative deficiencies, but rather problems with the organisation of investigative bodies' work, namely lack of institutional and personal independence of the investigators<sup>70</sup>, lack of prompt and thorough investigation<sup>71</sup> and inefficiency of control over the investigation<sup>72</sup>.

The analysis of the data provided by Russian authorities comparing the number of complaints received from persons deprived of their liberty alleging the use of torture or inhuman or degrading treatment (thousands)<sup>73</sup> with the number of public officials against whom criminal prosecutions were instituted for these offences (a handful)<sup>74</sup> from 2004 to 2009 confirms the defective status of the Russian criminal investigation system when it comes to torture as defined by the Convention.

## Section 4 - Conclusions and Recommendations

TRIAL respectfully submits to the Committee against Torture that the current state of Russian legislation does not respect the obligations embodied in Articles 4 (in conjunction with 1), 5 and 7 of the Convention against Torture.

Despite the 2003 amendments to the Russian Federation Criminal Code incorporating a definition of torture in Article 117, torture is still not properly criminalised in Russian domestic legislation.

First of all torture fails to be acknowledged and separately defined as an autonomous offence, yet it is regarded merely as an aggravating circumstance in several Articles of the Criminal Code.

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<sup>67</sup> See for instance ECtHR, *Khadisov and Tsechoyev v. Russia*, (no. 21519/02), Judgment of 5 February 2009; *Polonskiy v. Russia* (no. 30033/05), Judgment of 19 March 2009; *Toporkov v. Russia* (no. 66688/01), Judgment of 1 October 2009.

<sup>68</sup> See for instance 'The execution of judgments of the European Court of Human Rights concerning the effectiveness of the investigation into torture and cruel treatment committed by the police', Analysis of the problem and the recommendations of Russian human rights NGOs (24 June 2010), at <http://eng.publicverdict.ru/topics/researches/7387.html>.

<sup>69</sup> Conclusions and Recommendations of the Committee against Torture, Russia, CAT/C/RUSS/CO/4, 6 February 2007, paras. 9, 12, 13.

<sup>70</sup> See for instance, ECtHR, *Antipenkov v. Russia* (no. 33470/03), Judgment of 15 October 2009, paras. 67-69; *Polonskiy v. Russia* (no. 30033/05), Judgment of 19 March 2009, para. 112; *Toporkov v. Russia* (no. 66688/01), Judgment of 1 October 2009, para. 53; *Vladimir Fedorov v. Russia*, (no. 19223/04) Judgment of 30 July 2009, para. 72.

<sup>71</sup> See for instance ECtHR, *Polonskiy v. Russia* (no. 30033/05), Judgment of 19 March 2009, para. 111-112; *Vladimir Fedorov v. Russia*, (no. 19223/04) Judgment of 30 July 2009, para. 70.

<sup>72</sup> See for instance, ECtHR, *Antipenkov v. Russia* (no. 33470/03), Judgment of 15 October 2009, paras. 64; *Polonskiy v. Russia* (no. 30033/05), Judgment of 19 March 2009, para. 112.

<sup>73</sup> 5th Periodic Report of the Russian Federation to CAT, CAT/C/RUS/5, 28 February 2011, para. 220.

<sup>74</sup> 5th Periodic Report of the Russian Federation to CAT, CAT/C/RUS/5, 28 February 2011, para. 221.

Secondly, the definition of torture set out in Russian Criminal Code falls far short of the international standards embodied in the Convention: the paramount element of “public official requirement” is lacking and only some of the purposes envisaged in the Convention are covered.

The deficient criminalisation of torture in Russian criminal law is coupled with the inappropriateness of the penalties for torture-related offences.

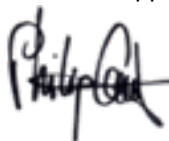
Furthermore the absence of a provision that would exclude the crime of torture from statutes of limitations is also problematic because the short expiration term of 10 years provided by current Russian legislation may prevent investigation, prosecution and punishment of these grave crimes.

Lastly, concerning the establishment of jurisdiction over torture offences, Article 12(1) of the Criminal Code unduly limits active nationality jurisdiction by laying down the requirement that the conduct be a crime in the territorial State as well.

For the above reasons, TRIAL respectfully suggests that the Committee against Torture recommends to the Russian Federation to:

- a. ensure that the crime of torture is separately defined and criminalised as an autonomous offence in its Criminal Code;
- b. ensure that the definition of torture present in its Criminal Code is brought in line with Article 1 of the Convention through the inclusion of the ‘public official requirement’ and a complete list of specific purposes and that acts of torture are not defined in terms of less serious offences such as “abuse of official powers”
- c. ensure that acts of torture be punishable by appropriate penalties taking into account their specially grave character and that any act constituting complicity or participation in torture can be investigated, prosecuted and punished without time limitations;
- d. ensure an effective investigation and prosecution of torture offences under the different titles of jurisdiction provided for in Article 5 of the Convention.

TRIAL remains at the full disposal of the Committee Against Torture should it require additional information and takes this opportunity to renew to the Committee the assurance of its highest consideration.



Philip Grant  
TRIAL Director