



**FOLLOW-UP REPORT TO THE CONCLUDING OBSERVATIONS OF THE COMMITTEE AGAINST
TORTURE ON RUSSIA'S SIXTH PERIODIC REPORT**

Prepared by OMCT and NGO Committee Against Torture

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Introduction

The following report comments on the priority recommendations of the UN Committee against Torture (hereinafter CAT) presented to the Russian Federation in its [concluding observations](#) of 28 August 2018. (paragraph 54) and the [Russian Federation's report on follow-up to concluding observations](#) in August 2019. The priority recommendations as stated in paragraphs 15,17 & 29 of the concluding observations concern the following issues: (1) effective investigations into acts of torture; (2) protection of human rights defenders and journalists.

On 5 November 2019 the NGO Committee against Torture, with the support of the OMCT, organized a roundtable to discuss the Russian Federation's implementation of the priority recommendations. Representatives of the following human rights organizations took part in the round table: Committee Against Torture, Russian LGBT Network, Public Verdict Foundation, Memorial, Citizens Watch, Soldiers' Mothers of Saint-Petersburg, Institute For Law and Public Policy, Human Rights Watch, Zona Prava, Charitable Foundation for Assistance to Convicted Persons and Their Families (Russia Behind the Bars). The results of the discussions held during the roundtable are included in this report.

Effective investigations into acts of torture

In paragraph 15 of its concluding observations the CAT recommended that the Russian Federation should:

- 1) Promptly, effectively and impartially investigate all incidents and allegations of torture and ill-treatment, prosecute all those found to be responsible and report publicly on the outcome of such prosecutions;*
- 2) Refrain from dismissing complaints of torture and ill-treatment during the pre-investigative verification phase and ensure that investigators immediately open a formal and effective criminal investigation for all allegations of torture and ill-treatment (...);*
- 3) Strengthen the capacity of the subdivision of the Investigative Committee tasked with investigating crimes committed by law enforcement officials, including by ensuring unimpeded access to all places of detention as well as to evidence, and providing sufficient human and financial resources to enable the subdivision to effectively operate in all constituent entities of the State party;*
- 4) Collect and provide the Committee with disaggregated statistical data on the number of complaints received alleging torture and ill-treatment by law enforcement and other public officials, the number of complaints investigated by the State party and any prosecutions brought.*

In their follow-up report the Russian authorities ignored almost all the CAT's recommendations, contained in paragraph 15 of the concluding observations. For example, information is absent on ensuring the effective investigation into allegations of torture, on the requirement to immediately open a full-fledged formal investigation for all allegations of torture and ill-treatment, on the strengthening of the capacity of the subdivisions of the Investigative Committee tasked with investigating crimes committed by law enforcement officials.

As for the statistical data (*concluding observations, paragraph 15(4)*), the Russian Federation submitted only information concerning the investigations into allegations of torture and ill-treatment by officials of the Federal Penitentiary Service. Information related to the number of

complaints and investigations into torture and ill-treatment by other law enforcement officials, as well as those investigated was not submitted. This situation arises because neither the investigative authorities, nor other authorities record the relevant statistics.

Torture and ill-treatment are not defined as a separate crime in the criminal code (hereinafter CC), Officials are usually charged under article 286 of the CC for exceeding official powers. More specifically, officials are charged under part 3, which codifies criminal liability for exceeding official powers committed with the use of violence or with the threat of its use. Therefore, the scope of application of article 286 of the CC is broader and is not limited to facts of torture and other cruel and degrading treatment. This is the reason for the lack of separate statistics concerning the prosecution for torture and other cruel and degrading treatment.

The situation related to ineffective investigations into allegations of torture and ill-treatment remains unchanged. (*concluding observations, paragraph 15(1)*) No methodological guidelines related to investigation of torture and other cruel and degrading treatment have been developed and implemented by the Investigative Committee.

An investigation becomes ineffective from the beginning when some steps in the proceedings are not conducted promptly and as a result evidence is irrevocably lost. This is true especially of search and seizure of crime evidence, the video surveillance at a crime scene, recording of injuries and so on.

In this regard, the methodological guidelines should contain an indicative list of the verification (investigative) activities to be undertaken without delay (initial interviewing victims, examination of crime scene, establishment and seizure of crime evidence, a forensic examination of the victim, request for the video surveillance). The heads of investigative bodies should be required to oversee the implementation of all necessary proceedings by investigators and issue the relevant tasks and clarify the reasons for non-compliance of such tasks.

It should be mentioned that the officials of the Investigative Committee are aware of the need for such methodological guidelines, see for example, joint order of 31.12.2014 №211/1323-FZ «On the procedure for cooperation of the investigators in Nizhniy Novgorod region investigation department and officials of the central administration of the Ministry of Internal Affairs in Nizhniy Novgorod region in addressing of crime reports relating to exceeding official powers and use of violence by law enforcement officials».

In their follow-up report the Russian authorities provided another example: a joint order issued by the investigation department in Novosibirsk region and the territorial authorities of Federal Security Service of Russia, the Ministry of Internal Affairs, the Federal Penitentiary Service and Federal Bailiffs Service «On the procedure for cooperation in detection and investigation of crimes committed by law enforcement officials». However, a common order is absent on the procedure of cooperation between operational subdivisions and the methodology of investigation into allegations of torture and other cruel treatment.

Further reform of the special departments of the Investigative Committee for the investigation of crimes committed by law enforcement officials was not implemented (*concluding observations, paragraph 15(3)*). The structure, number of staff and cost of these departments remained at the same level. Each special department, which operates at the level of federal districts, includes several regions.

A department consisting of three persons (two investigators and one head) within the federal district is capable of investigating only relatively few carefully selected cases. This is what often

happens in practice. The Volga Federal District includes 14 regions, in which 30 million people live. According to unofficial data, the Investigative Committee receives from 2 000 to 5 000 crime reports committed by law enforcement officials and officials of Federal Penitentiary Service. Obviously, this department consisting of three persons is unable to check, much less investigate effectively so many complaints.

As a result, the special departments of the Investigative Committee in their current state, cannot become effective mechanisms for investigating allegations of torture and other cruel, degrading treatment.

At the same time other common problems related to the efficiency of investigations into allegations of torture and ill-treatment remained unresolved. One serious problem is the systematic unlawful decision-making (refusal to open a criminal case, decision to suspend or terminate the criminal case. In the great majority of cases it is a question of incomplete investigations, failure to implement all possible and necessary verification (investigative) actions, which have caused the decisions to be unlawful.

There is a practice of deliberately adopting unlawful procedural decisions, when the heads of investigative body attribute this to the expiry of the deadlines and the lack of documentation at the time of adoption of the procedural decisions. This problem is aggravated by the two major factors.

First of all, this is connected with the inadequate procedural control, in particular, an untimely revocation of unjustified decisions. In most cases several months elapse between passing and revocation by the heads of investigative body of unlawful procedural decisions. Such revocations often happen only after a person concerned had brought a claim in a public prosecutor's office or court.

Secondly, this is related to the absence of measures for instituting disciplinary proceedings against the officials of the territorial subdivisions of the Investigative Committee that should be undertaken for the violation of the law during the pre-trial proceedings, in particular, the passing of unlawful procedural decisions and their untimely revocation.

The next problem is the victim's access to the investigation. Two issues should be mentioned: notification of the injured party and their access to the case file.

In their practice lawyers representing torture victims in the criminal proceeding face following types of non notification of the injured party:

- failure to notify or untimely notification of procedural decisions on the consideration of the crime report;
- failure to notify or untimely notification of procedural decisions during the criminal investigation;
- failure to notify or untimely notification of procedural decisions on the consideration of requests;
- failure to notify or untimely notification of procedural decisions on the consideration of complaints under article 124 of the Code of Criminal Procedure (hereinafter CCP);
- failure to notify or untimely notification of procedural time limits.

As for access to the case file, the most frequent problems in practice are:

- refusal to the applicant and/or their representative to allow consultation of documents of pre-investigation inquiry under article 144-145 of the CCP using technical means;
- refusal to the applicant and/or their representative to make copies of video recordings that are part of pre-investigation inquiry under article 144-145 of the CCP;

- refusal to the victim and/or their representative to allow consultation of documents of a suspended criminal case;
- refusal to the applicant/victim and/or their representative to allow consultation of documents of criminal proceeding or probative material due to the existence of information constituting a State secret or other secret protected by law.

These problems exist despite the large number of Constitutional Court's decisions in which it has repeatedly expressed the opinion related to the realization of the right to information in the criminal proceeding (for example, Judgement of the Constitutional Court of 18.02.2000 №3-J, Ruling of the Constitutional Court of 06.07.2000 №191, of 14.07.2011 №963-R-R, of 17.07.2007 №619-R-R, of 29.09.2011 №1251-R-R).

Furthermore, there is a concern that the body established by the Office of the Commissioner with responsibility to receive and investigate complaints from the outset of the detention (the Directorate for Protection of Criminal Procedure Rights), including with a mandate to monitor human rights violations with the aim to prevent torture (from the Alternative report of the Commissioner for human rights in the Russian Federation, to CAT, July 2018), does not in fact function in the way that meets the requirements for such a body. The same report refers to a reduction of number of complaints against illegitimate use of physical force in 2017 compared to earlier years. The evaluation based on the information received implies that reasons for possible decrease in number of complaints have to do with lack of systematic registration, lack of access to the complaint system in place and even fear of consequences for complaining, lack of trust.

There is also a serious problem with regard to documentation of torture and ill-treatment, in particular how any form of documentation is stored, applied and protected. While there has been reference on the part of the state that video recordings are available and may be included in legal proceedings, there seems to be no rules in place as to the access to this information by independent investigative bodies, or as to how this material is stored to secure that no manipulation takes place. Even in situations where there is available information that corroborates allegations of torture, these seem to have no evidentiary power and are not contributing in any way to ensure that those responsible in fact are held to account for acts prohibited under the Convention. Moreover, in many cases according to information received these video files are often manipulated and not provided on timely or correct manner.

The procedure for a formal investigation into allegations of torture and other cruel treatment is the following: first, when a crime report is received, pre-investigation inquiry begins, and then, if the criminal case is opened, a preliminary investigation starts. However, the overwhelming majority of torture complaints never reach the preliminary investigation phase. Indeed, the formal investigation is limited to the pre-investigation inquiry, that may be difficult to describe as the full-fledged investigation. The pre-investigation (доследственная проверка) is a procedure that has less safeguards and oversight on the conduct and in majority cases the important pieces of evidence from the crime scene as well as time sensitive evidence (bruises and physical injuries) may be lost. At the meeting of the OMCT delegation with the office of the Russian Federal Commissioner for Human Rights, the issue of negative practice of pre-investigation was raised and was fully supported by the Commissioner's staff as being ineffective and redundant especially in relation to the torture cases.

On 11 December 2018 during a meeting of the Presidential Council on the development of the civil society and human rights, the head of the interregional public organisation «Committee Against Torture», Mr. Igor Kalyapin, proposed 3 measures to improve the situation concerning torture and other cruel treatment and increase the efficiency of investigation of such cases by:

- 1) strengthening the specialized subdivisions of the Investigative Committee for investigating crimes committed by law enforcement officials;
- 2) include torture as a separate crime in the CC ;
- 3) setting up of the National Preventive Mechanism.

In response to this statement the Russian President stated that a solution primarily depends on the level of awareness in the society; the question of increasing the number of officials in the Investigative Committee is challenging and the question of criminalization of torture should be analysed and explored.

In whole, the reaction of the president demonstrates, in our opinion, that he does not consider the problem of torture and its efficient investigation as relevant enough. And it is one of the reasons this problem is not solved.

Protection of human rights defenders and journalists

In paragraph 29 of its concluding observations the CAT recommended that the Russian Federation should:

- a) Ensure that human rights organizations can conduct their work and activities freely in the State party;*
- b) Take measures to protect human rights defenders, lawyers and journalists from harassment and attacks, investigate all reported instances of such acts, prosecute and punish the perpetrators and guarantee redress, including effective remedies and adequate compensation, to victims and their families;*
- c) Ensure that human rights defenders, journalists and lawyers are not subjected to reprisals, including administrative harassment, for their communication with or provision of information to the United Nations treaty bodies, including the Committee (...)*

Concerning the freedom of association (*concluding observations, paragraph 29(a)*), Russia's follow-up report stated that it is not correct to consider non-commercial organizations which exercise functions of foreign agents in the context of an infringement of the rights of organisations funded by foreign sources. However, the infringement of the rights of organisations recognised exercising functions of foreign agents is an established fact.

The follow-up report referred to Federal Law of 19.06.2018 № 203-FZ «On amendments to article 18.1 of the Federal Law «On the detention of persons suspected or accused of having committed offences» and the Federal Law «On the public monitoring of human rights in places of detention and on efforts by voluntarily associations to improve their work»», that extends the rights of members of public monitoring commissions while visiting places of enforced detention.

The Federal Law «On the public monitoring of human rights in places of detention and on efforts by voluntarily associations to improve their work» prohibited the public associations included in the register of non-commercial organisations exercising functions of foreign agents to field candidates in the membership of public oversight commissions. (hereinafter POC)

Accordingly, CSOs designated as foreign agents are deprived of the opportunity to take part in the establishment of the POCs. These commissions are the only existing mechanism of public control in places of detention. Many CSOs are leaving or being barred from membership in POCs. It reduces the

scope and independence of the POCs and as such renders them unable to perform their work in effective manner.

Another issue of concern is the lack of unimpeded access to all places of detention because POCs do not enjoy full access to places where persons are deprived of their liberty. Furthermore, unannounced visits are not practiced, something which reduces the value of monitoring. There is no access to military institutions, to police station or to pretrial detention facilities. The problem of access in prisons under the criminal law includes limitations of access to registers and records, in particular, medical files. All this information is vital for a monitoring visit, aiming at ensuring respect of the prohibition against torture, and for it to be in compliance with article 2 of the CAT.

Finally, the need for monitoring bodies to carry out interviews that are confidential and private, is paramount, and the lack hereof may have significant consequences, first of all to the inmate, risking sanctions if complaints or reports are not shared privately. For the monitoring body members, it reduces their possibility of actively engaging in and understanding the conditions for the detained individual. The amended regulations imply that the prison guards are to be present during the interview and have a right to interrupt the interview if the conversation, according to their evaluation, is not in line with the purpose of the monitoring visit.

Concerning harassment of human rights defenders and journalists (*concluding observations, paragraph 29(b)*) the Russian authorities reported: «investigative authorities take necessary organizational measures to provide high-quality investigation and detection of crimes related to human rights defenders, journalists, lawyers and opposition politicians for their professional activities and establishment of circumstances contributed to its commission. In the criminal investigation of such cases the most experienced investigators are involved, to detect a crime investigative groups are created, which use widely available intelligence data and existing expert base and also the opportunities of international legal cooperation».

In this regard we would like to note the following:

In March 2016 the NGO Committee Against Torture organized a press tour to highlight the activities of the Joint Mobile Group. Human rights defenders, Russian and foreign journalists took part in this tour. On 9 March 2016 the journalists and human rights defenders were attacked near the administrative border of Chechnya and Ingushetia. As a result the participants on the press tour were injured, audio and video equipment was stolen or broken, a rental minibus was arsoned and its driver injured. The attackers beat the participants with sticks and verbally abused them, accusing them of being friendly to the terrorists, then the attackers got into the car and headed for Chechnya, passing the roadblock at the administrative boundary of Chechnya and Ingushetia.

A criminal case into the attack on the journalists and human rights defenders was officially opened on 9 March 2016. The period of the preliminary investigation was extended several times, however the investigation rendered no result: the attackers remain unidentified. No measures were taken to identify the owners of the vehicles which followed the minibus and the license plates of these vehicles to which the journalists and human rights defenders pointed during interrogations. On the contrary, it turned out that some actions were conducted untimely. For example, the investigator ordered the seizure of the surveillance footage from the checkpoints between Chechnya and Ingushetia only 8 April 2016, in breach of the criteria of promptness. It turned out that the surveillance equipment was inoperative. After three years two journalists that were members of the press tour have still not been interrogated.

The victims were only notified of the extension decisions but were never given the opportunity to familiarize themselves with the materials of the criminal case and fully take part in the criminal proceedings, inter alia, by appealing against actions or omission of the investigators. They tried to familiarize themselves with the materials of the criminal case in full several times and filed such requests to the investigator. However, the requests were refused by the investigator.

These refusals were appealed in the district court, which dismissed the appeal since the preliminary investigation had not been finished. The victims appealed in the Supreme Court of the Republic of Ingushetia, which dismissed the appeals of the journalists and human rights defenders on the same grounds in March and April 2019.

Therefore, this case is one more example of the systematic problem related to the inefficiency of investigations in the North Caucasus. To date none of the victims have been allowed to familiarize themselves with the criminal case file in full.

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