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Russian Federation: Torture and forced "confessions" in detention

Introduction

In May 2002, the UN Committee against Torture (CAT) examined the Russian Federation's third periodic report of its implementation of obligations under the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture). While noting some positive steps, the CAT stated that it was deeply concerned over, among other things, "numerous and consistent allegations of widespread torture and other cruel, inhuman or degrading treatment or punishment of detainees committed by law enforcement personnel, commonly with a view to obtaining confessions".

This month, the CAT has been examining the fourth periodic report and what progress the Russian Federation has made since May 2002, towards eliminating torture and other ill-treatment, including during police custody and pre-trial detention.

It is clear that some steps have been taken towards eliminating the practice of torturing or otherwise ill-treating detainees to extract "confessions". In particular, a new Criminal Procedure Code (CPC), adopted in December 2001, is in force, which introduced important new provisions aimed at putting a stop to torture in police custody and pre-trial detention. Chapter two of the CPC is devoted to "principles of criminal justice" which include the presumption of innocence; respect for the individual; legality; objective assessment of evidence; the right to a defence and the right of appeal; the inviolability of the person and a prohibition on torture and other cruel and degrading treatment; and the equality of arms. The CPC also contains other specific provisions intending to establish concrete safeguards against torture or other ill-treatment.

In particular, Article 75 of the CPC disallows evidence that has been obtained illegally. The Article states that any evidence, obtained in violation of the Code, will be inadmissible in criminal proceedings, and cannot be the basis for a prosecution. Inadmissible statements include statements made by the suspect or by the accused in the absence of a lawyer, and not confirmed in court.

Other important legislative initiatives include the signing into law by President Putin in April 2006 the transfer of all pre-trial detention centres (known by the Russian acronym SIZO) still under the jurisdiction of the Federal Security Service (FSB) to the Ministry of Justice, in line with Russia's commitment to the Council of Europe to do so.

Administrative measures to prevent torture and ill-treatment have been introduced or strengthened, including a small increase in the number of monitoring visits permitted to police custody facilities and SIZOs by ombudspersons and, occasionally, non-governmental organizations (NGOs). Individual ombudspersons' offices have handled numerous individual complaints alleging torture or other ill-treatment.

Some progress to tackle what has been termed "the no-acquittal doctrine"[1] has been made through the introduction of jury trials, in all regions apart from the Chechen Republic. In cases heard by juries, there tends to be more scrutiny of evidence, which tendency is acknowledged by the Russian authorities.[2] It is arguable therefore that there is less chance for the prosecutor to achieve a conviction solely on the strength of a "confession".

The training of many law enforcement officials includes some reference to international law and standards, [3] and in some regions, for example regions in the Privolzhskii Federal District, local NGOs have been cooperating with police in training initiatives relating to human rights and prevention of police brutality. And Russian NGOs report an increasing number of criminal investigations and some convictions relating to torture and other ill-treatment in detention, with more severe sentences assigned.[4]

Despite these positive steps, Amnesty International continues to be seriously concerned at the incidence of torture and ill-treatment in police custody and pre-trial detention, and the inadequate state response to tackle the violations. Amnesty International regularly receives reports of torture or other ill-treatment across the Russian Federation.

When an individual is detained as a suspect in connection with a criminal investigation, they are generally held first at a local police station in holding cells known as KPZ[5] before being transferred to a central police detention centre known as an IVS[6] under the jurisdiction of the Ministry of Internal Affairs (MVD). After 72 hours, all detainees should be transferred to a pre-trial detention centre, or SIZO[7], under the Ministry of Justice, although investigators can apply for an extension. The maximum period someone can be lawfully held in an IVS is 10 days.

Amnesty International has documented dozens of cases of alleged torture and ill-treatment with a view to extracting a "confession" in police custody and pre-trial detention during ordinary criminal investigations across the Russian Federation since May 2002. The "confessions" then formed the basis of the criminal case against them, on the basis of which they were convicted. In 2005 alone, Russian NGOs documented at least 114 arguable cases of torture (with medical records and other evidence supporting the applicant's claim) by police in 11 regions, not including the North Caucasus.[8] Minors as well as adults have been victims.[9]

[1] N. Uildriks & P. Van Reenen "policing post-communist societies: Police-public violence, democratic policing and human rights", Intersentia 2003

[2] The Russian Federation's fourth periodic report to the UN CAT, UN Doc. CAT/C/55/Add.11, 8 April 2005, available at http://www.ohchr.org/english/bodies/cat/cats37.htm, paragraph 129

[3] Ibid, paragraph 74

[4] However as no one article in the Criminal Code is used to prosecute cases of torture, there are no clear or comprehensive statistics on the number of such investigations and convictions.

[5] From the Russian term "Kamera predvaritelnogo zakliucheniya" or "preliminary holding cell"

[6] From the Russian term "Izolyator vremennogo soderzhaniya" or "temporary detention isolator"

[7] From the Russian term "Sledstvennii izoliator" or "investigation isolator"

[8] "Russian NGO Shadow Report 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, available at http://www.ohchr.org/english/bodies/cat/cats37.htm, paragraph 12.24

[9] See for example, UA 312/04, Fear of torture / ill-treatment, RUSSIAN FEDERATION: Viktor Knaus (m), aged 15 (AI Index: EUR 46/061/2004)

Although there are cases of torture and ill-treatment at all stages in the pre-trial detention system, sources confirm that the problem is most acute in police stations and IVSs. On the basis of numerous testimonies from alleged victims of torture, interrogators' offices in police buildings seem to be equipped with a safe, which contains a range of implements which could be used for torture: rope; electric cables; field telephones; truncheons; handcuffs; sacks; blankets; gas masks. Books and plastic water bottles are also used to hit the detainees.

Amnesty International has also received a number of testimonies about torture and other ill-treatment of detainees in pre-trial detention during times when they are particularly vulnerable to abuse - at night time; at weekends; during quarantine; at the start of a public holiday; in transit and on arrival at a new detention place.

In situations of conflict, the incidence of torture is even higher, and problems highlighted by this report are magnified. Amnesty International is particularly concerned about the practice of torture of individuals held incommunicado in unofficial and unacknowledged places of detention in Russia's North Caucasus region. Amnesty International has learned of such cases in Chechnya, as well as in the neighbouring republics of Ingushetia and North Ossetia. Reportedly, Nurdi Nukhazhiev, the Chechen Ombudsperson for Human Rights, stated in February 2006 that a large number of the 12,000 convicted Chechens in prison in Russia had been falsely accused, and that the majority of the cases should be re-examined.[10] Investigations leading to prosecutions of such allegations of torture are almost non-existent, which has created a climate of impunity in the region.

The Federal Ombudsperson for Human Rights, Vladimir Lukin, expressed his concern about torture and other ill-treatment by police, in his report covering the year 2005. He stated:

> *"An analysis of complaints received by the Ombudsperson for Human Rights shows that around 32% of the total number are complaints relating to violations of rights of detainees, suspects, accused and victims of crime during the process of inquiry (doznanie), preliminary investigation and during operative-search activities by officials of the organs of internal affairs.*
>
> *The number of crimes committed by officials of the organs of internal affairs continues to grow. Of particular concern are actions by police officers, which can be characterized as torture, inhuman treatment and treatment degrading to human dignity. According to data of non-governmental human rights organizations, over the last 10 years the scale of police violence has significantly grown. Most often the victims of such violence are persons who are drunk, youth and teenagers, and citizens of a 'non-Slavic appearance'."*[11]

[10] http://www.hro.org/editions/demos/2006/03/02.php

[11] Vladimir Lukin, "Report on Activity by the Ombudsperson in the Russian Federation in 2005", available at http://www.ombudsmanrf.ru/doc/ezdoc/05.shtml#e

Police practice

The Russian Federal Law on the Police of 1991, introduced as part of reforms of policing following the collapse of the Soviet Union, sets out the objectives of the police to serve the citizen as well as wider society and the state. The police are to “defend life, health, rights and freedoms of citizens, property, and the interests of society and state from criminal and other illegal attacks” (Article 1). However, the police “lack a democratic tradition and familiarity with basic human rights notions on an institutional level”.[12]

Russian society faces high – and rising - crime rates, and high levels of violence. In 2005 according to MVD statistics there were over 30,000 registered murders alone.[13] This presents real challenges for the police, which they are not equipped to cope with. Police officers receive relatively low salaries, work with poor equipment and lack of funding - often without computers or money to pay for petrol for police cars - and work in an environment where corruption is common. As a result, police officers are frequently unable to deliver effective policing. Several police officers who have spoken to Amnesty International were well aware of the sometimes very negative image the police have in the Russian Federation, in particular, allegations that police officers are corrupt and that bribe-taking is rife. A procurator in St. Petersburg, who – like many of his colleagues – was a police officer before he joined the procuracy, told Amnesty International that he understands his former colleagues’ lack of enthusiasm for their job due to corruption, the high turnover of staff who find much better paid jobs in other areas, and dire conditions for those left behind.

Moreover, promotion within the police appears to be based on numbers of crimes solved rather than the prevention or reduction of crime. As Niels Uildriks and Piet van Reenen write: “…Assessment criteria are not only ‘both voluminous and detailed’… but they are not subject to public disclosure either. What is clear however is that normally police performance continues to be judged in terms of officers meeting set crime detection targets.”[14]

Such an approach arguably leads not only to reluctance to register crime reports but also a skewing of priorities: the police are less concerned about identifying and ensuring the prosecution of the right criminal, than about achieving a conviction or other “solution” of a crime, so that it can be crossed off the list as “solved”. This was highlighted by CAT in 2002 as particularly problematic as it may lead to the use of torture, and motivate police to circumvent safeguards against torture to force “confessions” which are in many cases enough to secure a conviction.

These problems are recognized by the Russian authorities but are far from being solved. Federal Ombudsperson Vladimir Lukin wrote at the beginning of 2006 that:

> *“The leadership of the Ministry of Internal Affairs [MVD] of the Russian Federation does not deny that in relation to individual officers of that body, there are*

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[12] Niels Uildriks and Piet van Reenen *Policing Post-communist Societies. Police-Public Violence, Democratic Policing and Human Rights,* Intersentia, 2003, p. 49
[13] http://www.mvdinform.ru/stats/3998/
[14] Niels Uildriks and Piet van Reenen, p. 68

cases of bribe-taking, indifference, callousness and coarse actions, which frequently take the form of straightforward arbitrary behaviour towards citizens, whose rights they have a duty to protect. Unfortunately, steps taken by the MVD of Russia to strengthen discipline and raise accountability of their personnel are yet to achieve the expected results. Concealing crimes committed from the register, groundless refusal to accept and lodge complaints about violations of rights, officials of departments of internal affairs raising their hands against individuals, all remained at the end of the last year some of the most serious systemic problems of Russian society."[15]

The Minister of Internal Affairs, Rashid Nurgaliev, also recognized last year the serious and pervasive problems in the country's police force, and pointed to a need for serious reform.[16] Recently he stated that he intended to raise the professionalism of the police as well as improve conditions of detention in temporary police detention facilities (IVS).[17] And there have also been other recent initiatives apparently to address the situation, such as increasing the salaries of MVD staff involved in crime investigation.[18] These moves are welcome but given the deep-rooted practices of torture and ill-treatment a sea change is needed in Russia's policing.

Definition of torture

The UN Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (Convention against Torture), to which Russia is a state party, deals explicitly with torture and other cruel, inhuman or degrading treatment by public officials. Article 1 contains the following definition of torture:

"For the purposes of this Convention, the term '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..."

Cruel, inhuman or degrading treatment is the term used to describe a spectrum of practices including physical or psychological abuse, confinement in a dark cell, denial of detainees' basic needs, and other forms of abuse. Torture represents the most severe and deliberate end

[15] Vladimir Lukin, 2005

[16] *Ekho Moskvy* radio, 26 October 2005, reported Rashid Nurgaliev as saying that evidence in criminal cases is being fabricated across Russia, and characterizing the situation at local regional police stations as "catastrophic". http://www.echo.msk.ru/news/275446.html.

[17] http://www.mvdinform.ru/about/press/4415/#a02, citing *RIA Novosti* article, 23 October 2006

[18] Ministry of Internal Affairs Order no. 79, 14 February 2006

of this spectrum, and it is not always possible to draw a clear line between the type of abuse that amounts to torture, and that which amounts to other forms of ill-treatment. Some of the cases that feature in this report are so severe that they unquestionably amount to torture. For example, when Aslan Umakhanov (see page 10) was allegedly severely beaten and subjected to electric shock treatment to force him to “confess” there can be no doubt that what he suffered falls under the definition of torture in the Convention against Torture. However, whether or not any particular case cited in this report amounts to torture, the ill-treatment described is a breach of Russia’s obligations under international human rights law.

The prohibition of torture and ill-treatment in international law

All forms of torture or other ill-treatment are unequivocally prohibited under international human rights law. This prohibition is set out in numerous treaties and other instruments, and is also part of international customary law which applies to all states, irrespective of whether they are party to specific treaties containing the prohibition. Torture and ill-treatment are prohibited at all times and in all circumstances. No exceptions are permitted and states cannot derogate from their obligations in time of public emergency or for any other reason.

Article 5 of the Universal Declaration of Human Rights, which was adopted by the UN General Assembly in 1948, signified a consensus among states that no one should be subjected to torture or ill-treatment. Since 1948, numerous international and regional human rights instruments have been adopted which include this prohibition. These instruments include legally binding treaties and conventions, as well as declarations and similar instruments which are not legally binding in the same way as treaties, but which, having been adopted by the UN General Assembly or other UN bodies, carry considerable authority and represent strong agreement by states regarding the standards set out in them. The International Covenant on Civil and Political Rights (ICCPR), adopted in 1966, prohibits torture and ill-treatment under Article 7. The ICCPR establishes a body of independent experts, the Human Rights Committee, to supervise states’ parties’ implementation of its provisions. The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), adopted in 1950, prohibits torture and inhuman or degrading treatment under Article 3. The ECHR allows individuals to submit formal complaints to the European Court of Human Rights if their rights under the ECHR have been violated. The court delivers judgments which are binding and can instruct states to pay compensation to victims.

In addition to the prohibition in these general human rights instruments, there are a number of instruments and mechanisms which relate specifically to torture and ill-treatment. Some of these have been adopted and refined because of public pressure through organizations such as Amnesty International. In 1972, the UN General Assembly adopted the Declaration on the Protection of all Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In 1984, the UN General Assembly adopted the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), which sets out measures to be taken by states to prevent torture and ill-treatment by public officials, and which is legally binding on those

states that have ratified the convention. The Convention establishes the Committee against Torture (CAT), as a body of independent experts which supervises states' parties' implementation of its provisions. In 1985, the UN Commission on Human Rights appointed a Special Rapporteur on torture, an expert who is mandated to address the government of any state, irrespective of the specific treaties it is a party to, including by intervening in urgent cases. In June 2006 the Optional Protocol to the UN Convention against Torture came into force, which provides for an international and national independent monitoring mechanism for places of detention.

In addition to the instruments which deal specifically with torture and ill-treatment, there are two key international texts which set out standards relating to detention generally, and which include important safeguards against torture and ill-treatment: the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (UN Body of Principles) and the UN Standard Minimum Rules for the Treatment of Prisoners (UN Standard Minimum Rules).

The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, adopted in 1987, establishes a committee of experts drawn from the states parties – the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment (CPT) - which is empowered to visit places of detention with a view to strengthening the protection of detainees from torture and ill-treatment. The CPT has published a collection of standards which cover the main issues that it looks at during its visits to places of detention in states parties; these include a section dealing with police detention.[19]

Russia is a state party to all the treaties mentioned above, with the exception of the Optional Protocol to the Convention against Torture, and is consequently bound by their provisions.

The prohibition of torture in Russian legislation

No one article in the Russian Criminal Code reflects in full the CAT definition of torture and no one article is used to prosecute cases of torture. Article 117 of the Russian Criminal Code criminalizes "tormenting" (in Russian, *istiazanie*), defined as "the application of physical or psychological suffering by systematic beating or other violent means". One of the aggravating circumstances is if the "tormenting" is carried out with the application of "torture" (in Russian, *pytki*). Torture, or *pytki,* is defined in a comment added to the Criminal Code on 8 December 2003 which states that "torture (*pytki*) in the current article and other articles of this Code is to be understood to mean the application of physical or emotional suffering in order to force [the individual] to give testimony, or to carry out other actions against the will of the individual, and also in order to punish [the individual] or for other purposes." The maximum punishment under this Article is a prison term of seven years. It appears that Article 117, while containing many of the elements of the definition of torture in the UN Convention against Torture Article

[19] "The CPT Standards: 'substantive' sections of the CPT's General Reports" CPT/Inf/E (2002) 1, Rev. 2006, available at http://www.cpt.coe.int/en/documents/eng-standards-scr.pdf, pp. 6-16

1, does not fully reflect the element of the convention definition regarding the involvement of a public official or other person acting in an official capacity in inflicting, instigating, consenting to or acquiescing in torture.

In any case, Amnesty International is unaware of cases where state officials have been convicted of torture under Article 117, and indeed Russia's latest state report to the CAT does not mention any either. Instead, Amnesty International is aware of cases in which other articles of the Criminal Code have been used. These include Article 110 ("driving to suicide"), Article 111, part 3 ("intentional infliction of serious harm to health under aggravating circumstances") and Article 286 Parts 2 and 3 ("exceeding official authority", by state officials (part 2), and with the use or threat of use of violence, and/or with serious consequences (part 3)).[20]

The Russian authorities in their latest report to the CAT gave figures for the number of convictions of persons under Article 286 of the Criminal Code, "exceeding official authority". The report stated that under this article, there were 1018 convictions in 2002 and 946 convictions in 2003.[21] It is not clear from the report what proportion of such cases concerned torture and ill-treatment in police custody or pre-trial detention.

Amnesty International's campaigning against torture

This report concentrates on allegations of police ill-treatment and torture at the arrest and pre-trial detention stage and presents recommendations to the Russian authorities. It is drawn from ongoing research by Amnesty International, including most recently visits to the North Caucasus (Ingushetia and Kabardino-Balkaria) in June 2006, and to Sverdlovsk region, Rostov region, Ivanovo region, and Kaliningrad region in July 2006. The organization has also raised the issue of torture and ill-treatment and some of the cases featured in this report with the Russian authorities.

Amnesty International has campaigned against torture and ill-treatment since 1972. The organization has developed a 12-point programme[22] setting out the essential practical measures which governments should take to eradicate torture and ill-treatment.

Torture and other ill-treatment in police custody and pre-trial detention is only one of the areas of concern for the organization relating to the overall issue of torture and other ill-treatment in Russia. Amnesty International presented its range of concerns on the issue in two briefings to the CAT in 2006: *Russian Federation: Preliminary Briefing to the UN Committee*

[20] For example, the convictions in the cases of torture and other ill-treatment of Aleksei Mikheev (see page 19), Zelimkhan Murdalov and mass police brutality in Blagoveshchensk, Bashkortostan (see page 21).
[21] The Russian Federation's fourth periodic report to the UN CAT, paragraph 34
[22] Amnesty International's 12-Point Programme for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by Agents of the State, AI Index: ACT 40/001/2005

against Torture (AI Index: EUR 46/014/2006); *Russian Federation: Supplementary Briefing to the UN Committee against Torture* (AI Index: EUR 46/039/2006).[23]

[23] For additional information on concerns in the North Caucasus relating to torture, see *Russian Federation, Chechen Republic: "Normalization" in whose eyes?* (AI Index: EUR 46/027/2004); *Russian Federation: The risk of speaking out. Attacks on Human Rights Defenders in the context of the armed conflict in Chechnya* (AI Index: EUR 46/059/2005); *Russian Federation, Chechnya: Violations continue, no justice in sight* (AI Index: EUR 46/029/2005); *Russian Federation: Briefing – Torture, "disappearances" and alleged unfair trials in Russia's North Caucasus* (AI Index: EUR 46/039/2005).

Torture in pre-trial detention: focussing on “confessions”

Aslan Umakhanov, an ethnic Chechen lawyer born and brought up in Yekaterinburg, was detained on 29 March 2006 by police in the entrance of his apartment block. The police officers allegedly beat him before driving him to the regional Department for the Fight against Organized Crime (UBOP), where he was allegedly beaten again. He was then taken to the District Procuracy. His brother looked for him for several hours before finding him by chance in the Kirov District Procuracy. His cheek bones were cut and bruised. On 31 March Aslan Umakhanov appeared before a judge at Kirov District Court. The area around his eyes was deeply bruised and he asked the judge to look at him because he had been beaten about the face and his torso near the area of his kidneys. The judge reportedly did not stop proceedings or order an investigation, but prolonged his detention by two months. He was sent to the pre-trial detention centre (SIZO) in Yekaterinburg, which refused to accept him because of the signs of ill-treatment without a medical report indicating that his injuries pre-dated his arrival at the SIZO. He was taken back to the IVS at Frunze Street where a medical record was made of his injuries. The SIZO agreed to admit him once the IVS had formally made a record of his injuries.

On 12 April, Aslan Umakhanov was made to kneel in a vehicle and was driven from the SIZO to the UBOP headquarters in Yekaterinburg for questioning, and put in a room with three officials. Amnesty International has copies of documents authorizing and recording the transfer of Aslan Umakhanov from SIZO to UBOP on 12 April. These documents show that the investigator from the Office of the Kirov District Procurator in charge of the criminal investigation requested and approved the transfer of Aslan Umakhanov to UBOP for the purposes of “operative-search activities”. Prison transport records show that he was absent from the SIZO from 9am to 4pm.

Aslan Umakhanov gave the following account of his treatment, during those hours. He was severely beaten by the officials, sometimes with their fists and sometimes with plastic bottles full of water, in order to force him to sign a “confession”. At one point the men put a book on his head and then beat his head through the book. When he started shouting, they took a blanket from a cupboard in the office and wrapped it round his head. They also plugged two electric cables into an electric socket in the wall and electrocuted him in the heels and in the area near his kidneys. They also allegedly subjected him to racist abuse. After roughly six hours, he agreed to sign a “confession”. Using a rope from the cupboard they tied a 32kg bodybuilding weight to his left hand which dragged his body and head down level with the table. In that position he wrote a confession under their dictation. Later he was made to read it out before a video camera, repeatedly, until they were satisfied. At no point during the questioning was he given access to a lawyer.

Professional and well-trained police officers should investigate crimes using a variety of sources and should prepare in advance for any suspect interview by gathering sufficient and

adequate information which can be used in the interview to increase the internal pressure "within" the suspect, rendering external pressure unnecessary.[24]

If police officers are inadequately trained and unprofessional, they are less likely to investigate crimes through a range of sources of information. Instead they will be overly reliant on information or statements gained from interviews of witnesses, suspects and accused persons.

This appears to be the case in Russia where, according to NGO reports, police officers rely on information from interviews with detainees, suspects, accused and witnesses to give them initial leads when investigating a case and will detain individuals having no information to back up the initial arrest at all.[25] The absence of sufficient investigative preparation limits the police's opportunities to lawfully and professionally confront the suspect, making unlawful force more likely during the interview.[26] The police can then fabricate evidence to fit round the information or statement gained through the interview. According to the Human Rights Ombudsperson Vladimir Lukin, the police "not infrequently falsify evidence".[27]

Therefore there is a real risk that any safeguards against torture such as the presence of a lawyer – which make it less likely that an individual will give information or "confess" – will be perceived as hindering the entire investigation, and are to be circumvented rather than respected.

Circumventing safeguards against torture

> *"The CPT [Committee for the Prevention of Torture] attaches particular importance to three rights for persons detained by the police: the right of the person concerned to have the fact of his detention notified to a third party of his choice (family member, friend, consulate), the right of access to a lawyer, and the right to request a medical examination by a doctor of his choice (in addition to any medical examination carried out by a doctor called by the police authorities). They are, in the CPT's opinion, three fundamental safeguards against the ill-treatment of detained persons which should apply as from the very outset of deprivation of liberty, regardless of how it may be described under the legal system concerned (apprehension, arrest, etc)."*[28]

[24] *Understanding Policing: A resource for Human rights activists*, Anneke Osse, Amnesty International Nederland, 2006, p. 175

[25] "Russian NGO Shadow Report 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", paragraphs 11.13-11.15

[26] Anneke Osse, p. 176

[27] Vladimir Lukin, 2005

[28] Extract from the 2nd General Report [CPT/Inf (92) 3] paragraph 36, http://www.cpt.coe.int/en/documents/eng-standards-scr.pdf

"Everyone arrested or detained … shall be brought promptly before a judge or other officer authorized by law to exercise judicial power…"[29]

International standards set out particular safeguards against torture. In particular the right to legal counsel, the right to medical examination by doctor of choice and the right for relatives to be notified of the fact of arrest are fundamental. A further safeguard is judicial review of the legality of the arrest and detention. Some of these safeguards are set out in the new Criminal Procedure Code (CPC) and other legislation.

Police officers' training as to the rights of detainees and the safeguards protecting them from ill-treatment is clearly inadequate. A high ranking police officer from one of the Ministry of Interior educational institutes responsible for training explained to an Amnesty International delegate that police officers usually do not know the law and the accompanying operational procedures. Moreover, he explained that they simply cannot know the law as there are so many regulations that it is impossible to know them all, and comply with them. As an example, the officer considered that the right to legal assistance was set out in Russian law in a way that was too complicated for police officers to memorize and apply in practice. When the Amnesty International delegate put it to the senior officer that some parts of the law should be considered as "basic police knowledge", including the right to legal assistance, the police officer maintained this was too difficult to memorize or apply in practice.[30]

However, Amnesty International is concerned that, given the importance placed on "confessions" as part of police investigation, these safeguards against torture in international and national law are purposely circumvented in many cases in order for torture and other ill-treatment to take place.

The safeguards against torture set out in law are routinely flouted in the North Caucasus and moreover, such safeguards are incapable of being an effective protection against torture or other ill-treatment in cases where the detainees are held in an unofficial or unlawful place of detention, or where their detention is completely unacknowledged. In the context of the ongoing second armed conflict in Chechnya, Amnesty International has spoken to numerous men and women from the Chechen Republic during field visits in 2000, 2001, 2004, 2005 and 2006 who have reported experiencing torture and ill-treatment in different unofficial places of detention, where all safeguards were absent.

Access to legal counsel

Article 16 of the CPC guarantees the right of an individual, suspected of a crime or charged with a crime, to the assistance of a lawyer. Article 49 of the CPC sets out a number of circumstances where the participation of a lawyer is obligatory. These include the moment an individual is detained as a suspect in connection with a criminal case and the moment an

[29] The European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 5(3)

[30] Statements by a high ranking police officer at one of the Ministry of Interior educational institutes to an Amnesty International delegate, 29 June 2006

individual is charged in connection with a criminal case. Article 50 of the CPC guarantees the individual, or other persons with the agreement of the individual, the right to choose their lawyer. Internal regulations of IVS and SIZO set out the right of persons detained there to meet with their lawyers.

In practice, police officers and investigators appear to employ different strategies to deny detainees access to their lawyer.

One strategy is to detain individuals on the pretext of having violated the administrative code.[31] Police officers appear to be even less clear about rights of people detained under administrative law, police officers claim that they are not allowed access to a lawyer at all under administrative law.[32]

Another strategy is to question suspects and accused persons under procedures that ostensibly bypass the safeguards against torture in the Criminal Procedure Code – so that, in the eyes of the law enforcement officials, a lawyer is "not needed". Such procedures are given different names such as "investigative activities", "operative activities" or a "talk" or "chat", for which detainees are transferred back to police custody. The lawyer is not even informed of the transfer, let alone permitted to be present during the questioning. During such questioning the individual is tortured or ill-treated. This appears to be what happened to Aslan Umakhanov (see page 10).[33]

A third strategy is to place the detainee under what is known as "quarantine" which is then cited as a reason for denying a detainee's access to their defence lawyer. The internal order regulations for IVS and SIZO do not give a definition of quarantine or the length of time such quarantine can be invoked for, and there is little control of this power by the procuracy or the courts.

New arrivals at SIZOs are placed under quarantine, during which time they undergo a medical check and are assigned to cells. A defence lawyer in Yekaterinburg told Amnesty International that the duration of quarantine is wholly left to the discretion of the SIZO administration and can, in practice, last anything up to one week, depending on the number of new arrivals.

A fourth strategy is to transfer suspects and accused to premises on the territory of prison colonies temporarily functioning as a SIZO. Such temporary SIZO are known as PFIRSI from the Russian initials and are authorized purportedly to relieve overcrowding.[34] However they have the effect of making it harder for lawyers to access their clients. On transfer to a PFIRSI a suspect is typically held in quarantine during which time they cannot receive visitors including their lawyer and even once out of quarantine, permission for such a meeting must be sought from the head of the prison colony.

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[31] As confirmed by a high ranking police officer at one of the Ministry of Interior educational institutes

[32] Statements by a high ranking police officer at one of the Ministry of Interior educational institutes to an Amnesty International delegate, 29 June 2006

[33] For more information see *Russian Federation: Supplementary Briefing to the UN Committee against Torture* (AI Index: EUR 46/039/2006) p. 3

[34] From the Russian term "Premises, functioning as investigation isolators" or "Pomeshcheniya, funkstionniruyushie v rezhime sledstvennykh izoliatorov." They are established under a Ministry of Justice Order (Prikaz) from 1997, amplifying Federal Law 15 June 1996 N73-FZ.

The use of PFIRSI on the territory of prison colonies also bring suspects and accused into contact with convicted prisoners and reports of torture of the suspects and accused by convicted prisoners with the connivance of the authorities are numerous, in particular immediately following arrival while they are in incommunicado detention while in “quarantine”. While the introduction of the judicial sanction of arrest in 2002 has reduced the population of SIZOs by approximately 30 per cent, according to Ministry of Justice sources, the order on PFIRSI nevertheless remains in operation.

Ordinary regime prison colony UShCh 349/2 in the centre of Yekaterinburg is until recently known to have been used as a temporary detention centre where male suspects have been tortured. UShCh 349/2, also known as IK-2, shares a common wall with the main SIZO for Sverdlovsk Region, UShCh 349/1. Both institutions back onto Sverdlovsk Regional Court.

The PFIRSI for suspects under investigation in IK-2 are housed in the punishment block of the colony, some distance from the main barracks. Amnesty International has information on around 30 male suspects who were moved there between 2004 and 2006 after they had invoked their constitutional right to silence during the investigation of their case[35]*. Amnesty International collected this information on a six-day visit to Yekaterinburg; the true figure is undoubtedly higher.*

Once inside the premises at IK-2 the detainees found themselves under intensive psychological pressure from investigators to sign a “confession”. Such pressure included threats that they would be beaten, raped, or killed and that their relatives would be arrested as hostages until they signed. According to reports from detainees, which Amnesty International has been able to confirm by the number of consistent testimonies received and the corroboration by local lawyers, convicted prisoners were used by investigators to “speed up” the investigation, in exchange for additional visits from their relatives and sometimes early release on parole. In particular convicted prisoners would be allowed free access to the suspect while in solitary confinement in the punishment block, where beatings and rape of the suspect by the convicted prisoners were reportedly common. Convicted prisoners were given free access to the suspects’ cells at any hour of the day or night and were evidently aware of the details of their cases. Detainees were beaten by groups of up to six convicts, typically with fists, feet, rolled-up wet rags, truncheons and poles. Some of them have described a room where suspects were allegedly raped. They say it is a small room with a metal table, fixed to the floor, and straps to secure the suspect’s wrists and ankles. Rapes were carried out with poles and penises. Convicted prisoners have also staffed the hospital unit in the colony.

Amnesty International has seen evidence of broken fingers, fractured elbows, broken legs, and photographs of extensive grazing, cuts and bruising on detainees’ backs, chests, upper arms, ankles, eyes and feet, which the bearers say were all inflicted on them by convicts in IK-2. Amnesty International has also seen the scars made by razor slashes that one detainee inflicted on his own stomach, in an unsuccessful effort to be hospitalized and escape further brutality.

Brutality appears to have been most frequent soon after suspects were transferred to IK-2. As “new arrivals”, they were placed in quarantine and denied access to their defence

[35] Under Article 51 of the Russian Federation Constitution.

lawyer. According to former detainees, rape or the threat of rape was the final pressure that made them comply with investigation demands – either to sign a statement renouncing the services of their defence lawyer, to put their signature to at least one confession, or both.

Prisoners' rights activists in Yekaterinburg claim that after a series of disturbances in IK-2 in 2006, the use of torture by convicts against suspects has reduced. Amnesty International is not in a position to confirm this, and is concerned by all aspects of the detention of suspects in the colony.

Access to independent doctor

There is no article in the Criminal Procedure Code (CPC) that guarantees access to a doctor for detainees in police custody. Once a detainee is transferred to a pre-trial detention centre (SIZO) (usually having been charged), Russian law provides for a routine medical examination by the duty doctor. There is no provision allowing for a medical examination by a doctor of their choice in police custody or pre-trial detention.

Amnesty International is concerned that the lack of a provision allowing for independent medical examination in police custody or pre-trial detention compromises the ability of individuals and their lawyers to collect evidence to substantiate allegations of torture.

Akramat Gambotov has allegedly been repeatedly beaten and tortured in detention in Vladikavkaz, North Ossetia. Akramat Gambotov is ethnic Ingush; he and his family were displaced from the Prigorodnii district in North Ossetia following the conflict there in 1992. He was detained on 21 October 2005 in Ingushetia and transferred to Vladikavkaz, where he was charged with terrorism-related crimes of "banditism" and possession of a firearm (Articles 209 part 2 and 222 of the Russian Criminal Code).

According to information available to Amnesty International, during the period from January to June 2006, Akramat Gambotov was transferred for questioning on more than one occasion, without his lawyer being informed, to the premises of the Department for the Fight against Organized Crime in Vladikavkaz, North Ossetia, on the orders of the investigator in charge of his case. While at the Department for the Fight against Organized Crime, law enforcement officers allegedly subjected him to physical violence and humiliation in order to "prepare him" to subsequently sign testimony in the presence of a lawyer. Allegedly, on at least one occasion the investigator from the procuracy in charge of the case was present while Akramat Gambotov was being ill-treated. It is reported that Akramat Gambotov was taken to the Department for the Fight against Organized Crime for the whole day on 20 January. There he was allegedly beaten, tortured and humiliated. When he was brought back to the SIZO in Vladikavkaz that evening, the duty guard at the SIZO allegedly was very reluctant to accept him due to his physical condition. On 26 January, Akramat Gambotov was again taken to the Department for the Fight against Organized Crime for a day, where he was again allegedly tortured, allegedly to "prepare" him for an official interrogation session to be held the next day.

In January, Akramat Gambotov's lawyer lodged a formal complaint about the treatment of his client and requested that his client undergo a medical examination in the presence of the lawyer. However, a medical examination by prison doctors only took place in July or August, without the presence of the lawyer, during which no traces of torture were established. According to the lawyer, the procuracy has decided not to open a formal investigation into the alleged torture. The lawyer has not protested this decision as, without medical evidence of torture, it would be very difficult to succeed with such an appeal. Akramat Gambotov remained in detention at the time of writing.

Relatives notified of detention

Article 96 of the CPC states that relatives must be informed within 12 hours of detention of the fact of detention. The provision does not explicitly state that the relatives must be informed also of the whereabouts of the detainee. The article allows for an exception to be made if a procurator sanctions it in the interests of the secrecy of investigation and only in cases where the person detained is 18 years old or more. There is no maximum timeframe given by which relatives in all circumstances must be informed of the fact of detention, which is not in line with the UN Special Rapporteur on torture's recommendation that in all circumstances, relatives should be informed within 18 hours.[36]

The 12-hour rule is not followed in practice in many cases. In four out of 23 IVSs monitored between 16 December 2005 and 28 May 2006, according to the office of the Federal Ombudsperson on Human Rights, relatives were not informed within 12 hours of the fact of detention.[37]

According to Article 425 of the CPC, children under the age of 16 can be taken for questioning as witnesses or suspects only with the knowledge and consent of their parents. A parent, teacher, social worker, or other responsible adult must also be present during their questioning. This provision has also been breached.

"Sergei" (not his real name), aged 15, was detained in June 2006 in the Rostov-on-Don region without the knowledge of his parents, and was allegedly tortured in order that he "confess" to stealing a girl's earrings. "Sergei" has an alibi, to which three witnesses have testified in writing, attesting to the fact that he was at the time of the crime in another district.

On the day he was detained, a local businessman allegedly came to the house and asked to speak to "Sergei". As the family knew him, they sent "Sergei" off with one of his younger brothers, who ran back after 15 minutes to say that two men in plain clothes had been waiting for him at the businessman's house. They said they were from the police, but did not give their names. They drove "Sergei" off to a police precinct in Rostov-on-Don.

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[36] E/CN.4/2003/68, paragraph 26(g)

[37] Report on carrying out monitoring of observance of human rights in Temporary Detention Facilities in regions of the Russian Federation, http://www.ombudsmanrf.ru/doc/vistup8/k20_10_06.shtml

"Sergei" has said that the men took him into an office and locked the door, hit him, then pulling his right hand back over his right shoulder and his left hand up his back, handcuffed them together. Two officers asked if he stole the earrings, and when he said no, they reportedly began punching and kicking him, pushing him between them like ball. Over a period of two hours, he was beaten in the chest, on the back, and the legs. Twice they put a gas mask over his head and switched off the air vent. "Sergei" felt he was suffocating and lost consciousness both times.

They allegedly forced him to sign a "confession", saying that he had stolen the earrings, and at knife point warned him to tell no one about their conversation, or "you're dead". He was then driven to the area where the theft of the earrings was said to have taken place, and asked to identify his "accomplices" - which he did, in order to escape the men. He was allowed home at 10pm.

"Sergei's" parents took him for a forensic medical examination the following day, which confirmed injuries that appeared to have been inflicted by a "blunt hard instrument". Amnesty International has a copy of those findings and also of photographs of his injuries taken three days after his interrogation.

Judicial review of arrest

Article 108 of the new CPC provides that the courts, rather than the procuracy, have the responsibility for determining whether or not a suspect or accused person will be held in detention during a criminal investigation. (Previously, the procuracy was responsible for determining whether a person would be detained pending investigation.) Judicial review of arrest and detention is required by law to take place within 48 hours of the initial detention.

At face value, the earliest and most effective channel for a detainee to submit a formal allegation that they have been tortured should be the court before which they are brought to decide upon extending their pre-trial detention. Amnesty International has received information suggesting that the way the authorities in some cases are implementing this aspect of the reform denies detainees the full protection intended by the safeguard of judicial supervision of detention, ruling to prolong detention and "make a complaint" when an individual bears signs of physical ill-treatment. Amnesty International is concerned that a less than fully independent judiciary, such as in Russia, is less likely to deny applications to remand suspects and accused in custody, even when there are signs that the individual has been tortured. It appears that the judiciary in Russia is not currently able to fulfil its role in effectively responding to allegations of torture. Despite legislative reform and training programmes for judges, it appears that many judges fail to exercise the powers actually given to them – due either to political pressure from the procurator's office, or due to a failure to change their practice.

Failure of police to keep accurate detention records, so that a detainee can spend longer than 48 or even 72 hours in detention before they first see a judge, also compromises the effectiveness of the safeguard of prompt judicial review of arrest and means detainees have been ill-treated for longer or that visible signs of ill-treatment have had time to fade. Administrative arrest is also used to artificially extend the deadline of 48 hours.

Aleksei Dudin was arrested at his home in Yekaterinburg on 15 March 2004 by officials from the Operative-Search Bureau (ORB) and taken to the Leninskii district police station (ROVD) for questioning about an abduction and murder that had taken place in the city. He was then admitted to the IVS on Frunze Street.

Aleksei Dudin told Amnesty International that for two weeks he was transferred daily from the IVS for interrogation by ORB officials and police officers in an office on the third floor at the top of the Leninskii district police station building, where he was tortured in order to "confess" to the crime. He was also transferred in IK-2, where he slashed his stomach in protest at being held in solitary confinement there.

Aleksei Dudin should have had access to a lawyer and been able to contact his family from the first moment of his detention, but he was denied access to lawyer for two weeks and his family were allowed to see him only after six months, after another man reportedly had been forced to "confess" to the crime.

Within two days of his detention, Aleksei Dudin should have been given the opportunity to appear before a judge and complain about his treatment but this did not happen. When the case documentation was made available to him, Aleksei Dudin noticed that the record had been falsified, with the date of detention being noted as 26 March 2004 – 11 days later than it was in reality. When he told a judge what had been happening to him, the judge did not halt proceedings or order an investigation into his claims, but just said "write a complaint".

Amnesty International is also aware of a case where the court went ahead and ruled on the legality of the detention of two men, without the individuals physically being brought before the court at all, although they were in custody. The two men were simply handed a copy of the court's decision.

The effectiveness of the safeguard of being brought before a judge, providing not only review of the legality of arrest but also an opportunity for the detainee to complain about any ill-treatment, is also weakened should the detainee fear further torture or ill-treatment as reprisal for making such a complaint. This can particularly be the case when, during this initial court hearing, the individual is represented by a government-appointed lawyer, rather than a lawyer hired by the family. It is often only when detainees have been formally charged and they are transferred to a SIZO that families are able to arrange an independent lawyer, and detainees are more prepared to make statements that they have been tortured or otherwise ill-treated while in police custody. Detainees can be legally held for up to 10 days without charge in police custody before being transferred to a SIZO. Even while being held in a SIZO, Amnesty International is aware of cases where individuals have feared being transferred back to police custody and being tortured or ill-treated there as reprisal for their complaint, or for retracting their "confession".

Failures in investigations

The Procuracy is the body responsible for investigating allegations of torture and other ill-treatment in police custody. The procuracy works in coordination with police officers from the Internal Security Department of the MVD, who are responsible for detecting crimes committed by the police. While, as noted above (pages 2 and 8), there have been a number of investigations and prosecutions into torture, some ending in a conviction, a large body of research by human rights groups illustrates that the procuracy routinely fails to ensure an effective remedy against violations of a range of rights guaranteed by the constitution and human rights treaties to which Russia is a party. This applies in cases of torture or other ill-treatment by police. In such cases, the procuracy often refuses to examine serious allegations of abuse or conducts lacklustre investigations that do not lead to prosecution of the perpetrators. Russian NGOs report that: "Out of 76 arguable reports of torture (with medical records and other evidence supporting the applicant's claim) documented by human rights groups in [a number of] regions in 2002, official investigations established the fact of crime and the culprits only in 20 cases. In 2003, official investigations determined the facts of torture in 11 out of 154 cases; in 2004, in 47 out of 199 cases; and in 2005, in 33 out of 114 cases."[38]

Even the Russian authorities acknowledge the low number of convictions for torture resulting from investigations of allegations, but conclude that the low conviction rate is indicative of a small number of violations rather than any failures in the investigations.[39]

One problem is structural: the procuracy is both responsible for the investigation and prosecution of serious crimes, and the supervision of the legality of actions of state officials. This dual role means that investigations into allegations of torture by one and the same office of the procuracy that was responsible for leading the investigation during which the torture allegedly took place fail to meet the necessary requirements of independence and impartiality. For example, transfers of detainees from SIZOs to temporary SIZOs (PFIRSI) are carried out formally on the request and with the authorization of the procuracy. Thus the procuracy is not an effective avenue of complaint for individuals who have faced torture in PFIRSI.

In several rulings against Russia in the past year, the European Court of Human Rights pointed to serious deficiencies in the response of the procuracy to allegations of torture in police custody. For example, in the judgment *Mikheyev v Russia*, the European Court held that for an investigation to be effective it must be thorough, expedient and independent and found that in this case there had been "very serious shortcomings…, especially during the course of the investigation", concluding it had not been "adequate or sufficiently effective".

In September 1998 Aleksei Mikheev was detained and tortured by the police in Nizhnii Novgorod in order to make him confess to a crime which had never even happened. In an attempt to escape further torture he jumped out of the window of the police station. As a

[38] "Russian NGO Shadow Report 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", paragraph 12.24

[39] The Russian Federation's fourth periodic report to the UN CAT, paragraph 131

result of this he broke his spine. Criminal investigations related to the torture and ill-treatment of Aleksei Mikheev were opened and closed more than 20 times. The deputy regional procurator in charge of investigating the torture was the same official who had been in charge of the original criminal case in connection with which Aleksei Mikheyev had been detained; and this same official had allegedly taken no action when Aleksei Mikheyev told him that he was being tortured.

When individuals write to the General Procurator's office alleging they have been tortured and that no action is being taken by the local procuracy, the General Procurator's office usually simply forwards the complaint back to the procuracy of the same region. In the European Court of Human Rights case *Menesheva v Russia,* the applicant, a young woman, complained of having been detained in 1999 under administrative arrest and questioned as a witness, during which time she was beaten and threatened with rape. The European Court found serious deficiencies in the investigation into the unlawful detention and ill-treatment, which was opened only four years after the events complained of, when the matter was brought to the attention of the domestic authorities in connection with the applicant's proceedings before the Court. The applicant had written to the Rostov City procurator's office but that office had forwarded her complaint to the local procuracy, and the same official from that office who had been present in the police station on the day she was detained took the decision not to open an investigation.[40]

There are exceptions: for example, in the high-profile case of mass police brutality in Blagoveshchensk, Republic of Bashkortostan, in December 2004, the Office of the General Procurator initially took control of the investigation, as there was clearly little confidence that the republic's procuracy would investigate effectively.[41]

In 2005, the European Commission for Democracy Through Law (Venice Commission) issued an opinion concerning the procuracy in Russia in which it expressed concern that the procuracy is too big and powerful, exercises functions that belong to other state institutions, lacks transparency, and is vulnerable to political influence. It concluded that the institution requires considerable reforms that should redistribute many of its functions to the courts and the institution of the ombudsperson.[42]

Human rights organizations have begun to appeal to the courts regarding the failures of the procuracy adequately to investigate allegations of arbitrary detention and torture. Sometimes this meets with success; however, such successes do not guarantee that the procuracy will renew their investigation in a more effective way.

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[40] *Menesheva v Russia*, (Application no. 59261/00), 9 March 2006

[41] See Amnesty International, *Concerns in Europe and Central Asia: July - December 2004* (AI Index: EUR 01/002/2005)

[42] European Commission for Democracy through Law (Venice Commission), *Opinion on the Federal Law on the Prokuratura (Prosecutor's office) of the Russian Federation,* Adopted by the Commission at its 63rd plenary session (Venice, 10-11 June 2005), Strasbourg, 13 June 2005. CDL-AD(2005)014, Opinion No. 340/2005

Fear of reprisals

Investigations into torture are less likely when those seeking justice face reprisals. Amnesty International has documented disturbing cases where individuals seeking redress before Russian courts or the European Court of Human Rights for torture or ill-treatment have faced retaliation. There have also been instances of pressure on independent lawyers working on behalf of individuals who allegedly have been tortured.

On 27 June 2005, over 500 prisoners reportedly conducted a self-harm protest in a prison colony in Lgov, Kursk region, in protest at conditions of detention and beatings. When the prisoners' complaints about the beatings were not forwarded by the prison administration to the procuracy, the prisoners used razor blades to slash their arms, stomachs, necks, and swallowed metal items or drove them into their bodies in protest.

On 4 July 2005, the prison director and two deputies were reportedly removed from their posts, following an official investigation. However, at least two men who had complained to the Russian authorities and to the European Court of Human Rights were reportedly subjected to intimidation and the threat of torture because of their complaints.

Amnesty International received information about the obstruction of the investigation into the mass police brutality in Blagoveshchensk, Bashkortostan by the local authorities, including the intimidation of victims.

The local district procuracy allegedly refused to organize medical examinations of victims for over two months, and created obstacles for victims who attempted to obtain an independent medical examination in Bashkortostan. There were also allegations of pressure being put on victims to withdraw their complaints. A local newspaper, Zerkalo, was reportedly closed down after the editorial team refused to accept the owner's demands to stop writing about the events. A man pursuing a claim against the authorities, in relation to his 16-year-old son's alleged arbitrary detention and ill-treatment, was reportedly fired from his state sector job. Despite there having been hundreds victims of the police operation, only around 30 people ended up pursuing their complaints.[43]

Amnesty International is further concerned that the right to legal assistance has been interfered with by the procuracy in cases in which lawyers, in the exercise of their function, have filed complaints on behalf of their clients alleging they have been subjected to torture or

[43] Only one police officer - a low ranking local police officer - has so far been convicted in connection with the events and was sentenced to three years' suspended sentence in September 2005 for "exceeding official authority" during the operation. A court case against seven other officers was ongoing at the time of writing in November 2006. See Amnesty International, *Concerns in Europe and Central Asia: January – June 2006* (AI Index: EUR 01/017/2006)

other ill-treatment. Part 3.2 of Article 56 of the CPC provides that “a lawyer or public defender of a suspect, accused [cannot be questioned as a witness] about circumstances which they learned in connection with a request for legal assistance or in connection with providing legal assistance”. However, this provision has been used to remove defence lawyers from cases.

In Kabardino-Balkaria in November 2005, three defence lawyers of four young men, detained following the raid by armed gunmen on the city of Nalchik in October 2005, were removed from their duties as defence lawyers. One of the lawyers was Irina Komissarova, who had been working as defence lawyer for Rasul Kudaev. Rasul Kudaev was allegedly tortured in detention in October 2005 at the Department for the Fight against Organized Crime in Nalchik. The basis for the lawyers' removal was that, having submitted formal complaints to the authorities on behalf of their clients alleging they were tortured and ill-treated, they were called in and questioned by the procurator's office about their petitions. The procurator's office then held that since they had been questioned as "witnesses" in their client's criminal case they therefore could no longer act as defence lawyers, and ordered that new lawyers be appointed. The MVD of the Republic subsequently issued a civil suit for defamation against Irina Komissarova. The MVD claimed that allegations attributed to her in a newspaper article that her client had been tortured were untrue and were damaging to the Ministry's professional reputation. The civil suit was later dropped.

Weak preventive national monitoring mechanisms

National bodies that undertake monitoring visits of police custody (IVS) and pre-trial detention facilities (SIZOs) have so far been unable to effectively prevent and protect detainees from torture in Russia. The national agency with real powers to visit unannounced these places of detention and which does carry out such visits regularly is the procuracy. As described above, this cannot be described as an independent mechanism (independent from law enforcement agencies and the executive) and therefore its efficacy in preventing torture is under question. Conversely, federal and those regional ombudspersons undertaking visits have more independence but have fewer powers. Non-governmental organizations undertaking such visits have no formal powers at all.

A draft law to strengthen the monitoring of all places of detention, called "On public monitoring of proper observance of human rights in places of detention and on the assistance of public organizations in the work of such institutions"[44], passed its first reading in the State Duma in September 2003. However since then, the second reading has been postponed twice. To Amnesty International's knowledge, there are no formal reasons to delay the second reading.

Visiting pre-trial detention facilities

Pre-trial detention facilities (SIZOs) are under the jurisdiction of the Ministry of Justice. The legal provisions allowing for different bodies to visit them are set out in the Criminal Execution Code and the Federal law "On institutions and organs, providing for the implementation of custodial sentences in the criminal justice system" which lists those agencies able to visit both prison colonies and pre-trial detention facilities without having to seek special permission in advance.[45] Out of those listed, those regularly undertaking visits are officials from the federal and regional Procurators' offices, federal and regional ombudpersons and members of public monitoring commissions set up under the Ministry of Justice.

The procuracy is supposed to visit every week day, but the visits often appear to be pro forma and not often out of hours. Federal and regional ombudspersons appear to visit less predictably, including at weekends. They can raise individual cases and ensure prisoners' access to documentation on their case, but have limited powers of enforcement, on the whole referring cases and issues to the procuracy and publishing reports. Public monitoring commissions were established under a Ministry of Justice order in August 2003 and commissions are reported to be active in about 30 per cent of the regions. They are made up

[44] For text of draft law in Russian see http://asozd.duma.gov.ru/main.nsf

[45] Article 24(1) of the Criminal Execution Code and Article 38 of the Federal Law "On institutions and organs, providing for the implementation of custodial sentences in the criminal justice system" 21.07.93 г. N 5473-I, as amended 8 December 2003

of representatives of civil society and have a mandate to visit SIZOs and prison colonies, but again have no formal powers of enforcement.

Media and other individuals, which includes independent NGOs, have the right to visit SIZOs and prison colonies only with special permission of the detention facility's administration and therefore any programme of visits is dependent on the good will of the administration.[46] Regional public chambers, such as in the Republic of Mordovia, also might undertake visiting activity.

Visiting police custody

Police custody is the area most closed to independent outside scrutiny, although there are agencies permitted to visit. These are not listed in one document, rather the power is found in different federal laws setting out the authority of each body. The procuracy is able to visit police custody facilities unannounced as well as to have access to documents and interview people to review the legality of state actions there[47]. State Duma deputies also have the right to visit IVSs unhindered[48] but, according to former Duma Deputy Valery Borshchev, there has been a reduction in the number of Deputies undertaking this activity in recent years.

The Federal ombudsperson is permitted to visit unhindered any official institutions, which includes IVSs, and request documents in order to investigate a complaint received.[49] Many regional ombudspersons also undertake visits to IVSs on the legal basis of provisions in the regional laws that established their post. However, the focus on such visits appears often to be the conditions of detention in IVSs, which in some cases have been declared as 'torturous'.[50] In practice, it appears that ombudspersons need good working relations with law enforcement officials and to have a broad portfolio of activity, not exclusively devoted to individual cases, in order to be able to undertake these visits. All of this limits the ombudsperson's capacity - and perhaps willingness - to intervene.

Some NGOs also undertake visits to IVS but again this is on the basis of bi-lateral agreements reached with local authorities; the visits are not unannounced, and the agreements can be withdrawn.[51] There is no equivalent of the public monitoring commission as set up under the Ministry of Justice to visit SIZOs and prison colonies.

[46] Article 24(3) of the Criminal Execution Code
[47] Under Article 22(1) of the Federal Law "On the Procuracy"
[48] Under Article 5(2) of the Federal Law "On the status of Deputies of the State Duma" of 5 July 1999 г. N 133-FZ as amended 9 May 2005, available at http://www.duma.gov.ru/
[49] Under Article 23(1) and (2) of the Federal Constitutional Law "On the Ombudsperson for Human Rights in the Russian Federation", N 1-FKZ, 26 February 1997
[50] See for example the report of the Perm region ombudsperson "Perm Region: violations of citizens' rights uncovered in IVSs of Berezinskii and Solikamskii Department of internal Affairs" following a visit to the facilities on 27 June 2006, accessed at http://www.ombu.ru on 24 October 2006.
[51] Eg Perm Regional Human Rights Defender Center, Nizhnii Novgorod CAT

Obstruction of international preventive monitoring mechanisms

On the international level, the Russian authorities have failed to cooperate fully with the UN Special Rapporteur on torture and the Committee for the Prevention of Torture (CPT), and have not signed, let alone ratified, the Optional Protocol to the UN Convention against Torture which provides both for an international monitoring mechanism and the establishment of a national independent one.

In 1995, the UN Special Rapporteur on torture visited police custody and pre-trial detention facilities, as well as prison colonies, in Moscow and St Petersburg, on the invitation of the Russian government.[52] However, despite lodging a request in 2000 for a subsequent invitation to visit the Russian Federation with respect to the Republic of Chechnya, the Special Rapporteur has yet to visit the Russian Federation a second time. The Special Rapporteur was due to visit Russia in October 2006, but this visit was postponed at short notice as the Russian authorities failed to agree to the Special Rapporteur's Terms of Reference, "particularly with respect to carrying out unannounced visits, and holding private interviews with detainees."[53] Given that Russia made particular reference to "active co-operation" with the UN Special Procedures and the scheduling of the visit by the Special Rapporteur on torture in its pledge when it stood for election to the UN Human Rights Council in May 2006, this refusal of the Russian authorities to agree to the Terms of Reference is extremely disappointing.

When Russia ratified the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment in 1998 it committed itself to cooperating with the CPT, including giving it access to any place within its jurisdiction where people are deprived of their liberty. The CPT has since visited Russia on 13 occasions, during which it has looked into, among other things, torture and ill-treatment in police detention, and issued reports and recommendations on each visit to the Russian authorities. However, Russia has yet to authorize publication of 12 out of 13 of the CPT's reports. Russia is the only Council of Europe country not to regularly authorize the publication of the CPT's reports and while Russia does not have an obligation to do so, it has become established practice of parties to the convention. Both the Secretary General of the Council of Europe and the Parliamentary Assembly have repeatedly called on Russia to authorize the publication of the CPT's reports. Moreover, although Russia has generally permitted the CPT to visit places where people are deprived of their liberty, there have been significant failures regarding its cooperation with the CPT, namely in relation to denial of access to detention facilities in Chechnya.[54]

[52] UN Doc E/CN.4/1995/34/Add.1

[53] "Special Rapporteur on torture regrets postponement of visit to Russian Federation", 4 October 2006, http://www.unhchr.ch/huricane/huricane.nsf/view01/4FBC8B4AABF40CDFC12571FD003E28AB?opendocument

[54] See CPT Public statements of 10 July 2001 and 10 July 2003, and News flash of 9 May 2006, at http://www.cpt.coe.int/en/states/rus.htm

Recommendations to the Russian authorities

- The government should take immediate and decisive action to demonstrate to the police that torture and ill-treatment will not be tolerated
- The Russian authorities should respect their obligations under international human rights treaties to protect the rights of those in detention to be free from torture or other ill-treatment, including by ensuring access to legal counsel at all stages of the criminal investigation, access to a doctor of their choice, for relatives to be notified of the detention, and for detainees to be brought promptly before a judge
- The government should fully cooperate with international mechanisms against torture: by immediately authorizing the publication of the reports and recommendations of the CPT, and facilitating without delay the visit of UN Special Rapporteur on torture
- The government should sign and ratify the Optional Protocol to the Convention against Torture, and establish a mechanism for unannounced inspections of all places of detention, including police custody and pre-trial detention centres, by credible impartial investigators, whose findings should be made public
- The Ministry of Justice should immediately abolish the practice of holding suspects and accused persons in places where they are in contact with convicted prisoners
- The government should immediately ensure that all unofficial detention facilities in the North Caucasus are closed down
- Police officers should be provided with the necessary technical resources and professional skills to carry out their duties, and the training of all police officers should involve a compulsory human rights component
- In line with Russia's obligations under Articles 2, 3 and 13 of the ECHR, the General Procuracy should develop standards for ensuring investigations are independent, effective, thorough, prompt, and ensure procurators are trained in how to investigate allegations of torture.