

Human Rights Council Working Group on the Universal Periodic Review
16th Session, 22 April to 3 May 2013

ADVOCACY/BRIEFING NOTE

ICJ suggested recommendations: Universal Periodic Review of Russia

This advocacy note is brought to the attention of all Permanent Missions to the United Nations Office at Geneva. This note addresses issues set out below, as further explained in the UPR Stakeholder Submission of the International Commission of Jurists (ICJ). The ICJ's full submission, along with an analysis comparing recommendations in that submission with corresponding first cycle recommendations and commitments, can be found online at: <http://www.icj.org/icj-comments-on-universal-periodic-review-of-russian-federation>.

1. Torture and other gross human rights violations

Russia currently has the greatest number of torture and ill-treatment complaints of any State Party to the European Convention of Human Rights, and the European Court has found more violations by them than any other State party to the Convention. The inadequacies of essential safeguards required by Article 2 CAT allow for detainees to be subjected to torture and any formal national safeguards in place are not always respected in practice.

Suggested recommendations:

- i) Ensure that conduct amounting to torture as defined in Article 1 CAT is prosecuted as torture under Article 117 of the Criminal Code, rather than as more minor offences carrying lighter penalties;
- ii) Implement in practice the right to access to an independent lawyer, for a period of time sufficient to provide effective legal advice, immediately following arrest or detention and regularly thereafter;
- iii) Ensure that all detainees enjoy in practice an immediate right to inform a family member or other person of their detention;
- iv) Ensure that judicial review of detention is real and substantial and is sufficient to safeguard detainees against ill-treatment;
- v) Take steps to decrease reliance on pre-trial detention; and
- vi) Take effective measures to protect against harassment and threats towards lawyers, in particular in the North Caucasus.

2. Impunity for gross human rights violations

Despite increased stability in the region, practices of arbitrary, including secret, detention, torture and other ill-treatment and enforced disappearances continue to be widespread in Chechnya, as well as elsewhere in the North Caucasus, and are perpetuated with impunity.

Suggested recommendations:

- vii) Conduct prompt, thorough and effective investigations into acts of torture and other ill-treatment in the North Caucasus and elsewhere in the Russian Federation;
- viii) Take effective measures to prevent and put an end to the practice of and impunity for torture and other ill-treatment by military, security services or other State agents;
- ix) Carry out systematic and structural changes in the law enforcement and justice systems aimed at effectively tackling the problems of impunity for torture and other ill-treatment.

3. Independence of the judiciary

From ICJ missions to Russia in 2010 and 2012, it found that the extensive powers of court presidents frequently serve as a conduit for executive or other influence in both civil and criminal cases. Such attempts to influence the judiciary are a serious threat to its independence and its ability to provide a fair hearing in accordance with international human rights standards.

Suggested recommendation:

- x) Strengthen the independence of the judiciary including through reforms of the systems of judicial appointment, selection and promotion, and of judicial discipline.

4. Law on NGO activities

The effect of the Russian law on the activities of NGOs is that all NGOs who receive money or property from "foreign sources" can be construed arbitrarily by law enforcement officials as "foreign agents". The vagueness of the amendments raises concerns about the chilling effect on the freedom of association. The same law amends the Criminal Code to establish a new offence of the creation of an organisation whose activities are connected with "incitement to refusal to carry out citizen's obligations or carrying out other illegal activities". The unduly vague term "citizen's obligations" is neither foreseeable nor predictable, in contravention of article 22 ICCPR.

Suggested recommendations:

- xi) Amend the law on NGO activities to make its application foreseeable and predictable and eliminate the possibility of its abuse or arbitrary application;
- xii) Amend the law on NGO activities so as to meet international human rights law standards of prescription by law and so as not to permit undue interference with the legal exercise of the right to freedom of association.

5. Transfer of suspects in breach of the obligation of *non-refoulement*

Given the widespread and systematic use of torture and ill-treatment in several States Parties to the Shanghai Convention, the ICJ is concerned at the many extraditions and informal transfers from Russia to other States Parties. Such transfers, which sometimes rely on diplomatic assurances from States where torture and ill-treatment is widespread or systematic, violate the obligation of *non-refoulement*.

Suggested recommendations:

- xiii) Scrupulously respect the principle of *non-refoulement*, cease reliance on diplomatic assurances against torture and other ill-treatment and ensure that detentions and transfers comply with national law and procedures as well as international human rights obligations.

6. Homosexual propaganda bans

Laws prohibiting the 'promotion' of homosexuality amongst minors have recently been enacted in many regions in the Russian Federation and a draft national law has been referred to the State Duma, which will consider its adoption in December 2012. The homosexual propaganda bans are all similarly worded and impose significant fines.

Suggested recommendations:

- xiv) At the Federal level, reject the draft Amendment to the Code of Administrative Offences on establishing administrative responsibility for the promotion of homosexuality amongst minors;
- xv) Repeal existing regional laws banning homosexual propaganda;
- xvi) Discourage regions that are considering adoption of similar propaganda bans;
- xvii) Adopt comprehensive anti-discrimination legislation that includes sexual orientation and gender identity as protected grounds.

7. International human rights instruments and mechanisms

Russia is still to become a party to several human rights instruments. Its treaty submissions have not always been timely and there are many longstanding requests for Special Procedures visits.

Suggested recommendations:

- xviii) Become party to the Second OP to the ICCPR, the OP to the ICESCR, the Second OP to the CRC, the ICRMW, the ICPED, and the Rome Statute of the ICC;
- xix) Extend all reasonable cooperation and assistance to facilitate timely and effective country missions in respect of outstanding country mission requests by Special Procedures;
- xx) Present to the Council, as soon as possible after adoption of the outcome document for the UPR of the Russian Federation, a national plan of action for implementation of accepted recommendations and voluntary pledges and commitments; and
- xxi) Present to the Council, two years after adoption of the outcome document, a mid-term progress report on the status of implementation of recommendations and voluntary pledges and commitments.

The ICJ expresses to all Permanent Missions the assurances of its highest consideration.
