Rights of the Child in the Russian Federation

Report on the implementation of the Convention on the Rights of the Child by the Russian Federation

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1. INTRODUCTION

The present report was written in February/March 2005 by the World Organization Against Torture (OMCT), an international coalition of NGO's fighting against torture and ill-treatment that coordinates the worldwide SOS-Torture network. The study is based on documents and reports by the United Nations institutions and bodies, on information received from OMCT's local NGO networks and on public sources like media, internet and doctrine.

By comparing the Russian Federation's international obligations with its national legislation and the local practice, this report aims to identify gaps and insufficiencies in the implementation of children's rights. Thereby it is basing its legal analysis on the Convention on the Rights of the Child (CRC). The report aims to give valuable neutral information to the UN Committee on the Rights of the Child (hereinafter the Committee). It further tries to make useful proposals for future recommendations to the government.

1.1. Preliminary observations

In the United Nations, the Russian Federation is the successor state of the Soviet Union. Since 1991, when the dissolution of the Soviet Union took place, socio-economic situation of the Russian Federation has been difficult. Through the 1990’s its population has seen drastic fall in real per capita income, default of 1997 and socio-political instability associated with transition from central planning to a market economy, sharp economic differentiation of the population and with the war in Chechnya. For the past 10 years, the population of Russia has decreased by 9 million people. In the country, nowadays, mortality among the newly born is about 25 per thousand, which is 6 to 8 times higher than in many countries of Europe and North America.

About 20 % of the population has still been living below officially established poverty level. Yet, in the years 2000-2004 there have been rather strong indications of a trend towards stabilization and improvement of the socio-economic situation. According to official statistics¹, for the last 5 years the rates of growth of GDP² has been of the order of 6.8 %. In 2004, real per capita income, in US dollar equivalent, was about $ 4 000, which is more than twice the level of 2000 and more than three times the level of 1999. For 2004, the pensions have risen by 5.5 % and real disposable income of the population – by 7.8 %.

The positive dynamics of the changes in the socio-economic situation of Russia lays the ground for further improvement of social parameters of life for its population. The unemployment, which in 2004 decreased by 5.5 % and was at the level of 7.4 % of the total working age population, is to go down. Minimal wage, used for calculating a number of social payments, from 1 January 2005 has increased by 20 %, triggering the increase by 20 % of salaries of all state sector employees. As from 1 October 2005, the minimal wage will be increased again by 11 %, so that for the year 2005, in real terms, the salaries of state sector employees will grow by about 22, 9 %.

The consolidation of political and economic power in the federal centre under President Vladimir Putin (in power since 2000, re-elected in 2004) augurs well for the further improvement of the socio-economic situation in the country and – as a result – for greater opportunities to implement its international obligations under the Convention (CRC). Protection of the rights of the child has been established as one of the priorities of the Russian government.

¹ Rossiyskaya Gazeta, Press-conference of President Vladimir Putin, 22 December 2004.
² Gross Domestic Product: the total of goods and services produced by a nation over a given period, usually one year.
1.2. General remarks on the situation of children in Russia

According to a report by UNICEF\textsuperscript{5}, dated of November 2004, out of a population of 143 246 000 people, 29 723 000 were under 18 years of age and 6 119 000 under 5 years of age in 2003. Among them, some categories of children are particularly vulnerable for various reasons: i) difficult family situations that make children leave their homes - a total number of 700 000 orphans and children without parental custody is counted in the Russian Federation today\textsuperscript{6}; ii) HIV-AIDS - the official number of children under 15 living with HIV is over 8000, in fact there are probably 3 or even 4 times more than that\textsuperscript{7}; till this day, at least 7600 children have been born to HIV-positive mothers, very often they are abandoned\textsuperscript{8}; iii) poverty, alcohol, and drug abuse.

In that connection, according to UNICEF, dated of November 2004, despite recent economic growth in Russia, poverty remains widespread and children are at greater risk of poverty than any other group\textsuperscript{9}. This may be explained by the fact that between 1990 and 2000, falls in national wealth meant falls in spending on basic social services such as education and health. Some progress has been achieved through a small increase in real wages and GDP and the proportion of people living below subsistence minimum levels has slightly decreased. Still, the benefits of economic growth are not being felt by everyone and poverty still hits families with children first and hardest, as well as those with low levels of education and those in rural areas. Among the main causes of poverty, one can find low wages, high levels of unemployment and under-employment and widening gaps between rich and poor. These problems have a negative impact on the growing social problems such as family breakdown, violence and the rising numbers of "social orphans" in state care.

Other situations with a particularly high risk of children's rights violations often result from the children's institutionalization - almost 2 % of the entire child population, namely 500 000, live in institutions\textsuperscript{10}, or their involvement in the criminal system. Moreover, there is an uncertain number of street children, estimates range from 40 000 to 3.5 million.\textsuperscript{11} The Russian Federation is also one of the most important "supply" and transit countries for young sex workers and human trafficking\textsuperscript{12} which endangers children in particular.

With regard to the war in Chechnya, specific problems related to armed conflict, displacement, terrorism and ethnic violence emerge (this is described below in section 3.2).

According to the "Report of the Commissioner responsible for the implementation of the rights of the child in Moscow" dated of 2003\textsuperscript{13}, the activity accomplished by the Commissioner in 2003 in the sphere of the rights of the child shows that many of the freedoms and rights of the children announced in the Russian Constitution, in the federal legislation and in the normative acts of Moscow are not yet implemented.

One of the main reasons for this lack of implementation of children's rights is the existing bureaucratic approach to solving the problems of the rights of the child, reflected not only in the administrative

\textsuperscript{5}For these and the following statistics see http://www.unicef.org/info/country/russia_statistics.html.
\textsuperscript{8} UNICEF, "Children in the Russian Federation", Briefing by Carel de Rooy, 16 November 2004, p.5.
\textsuperscript{9} For these and the following statistics see UNICEF "Children in the Russian Federation", Briefing by Carel de Rooy, 16 November 2004, p.4
\textsuperscript{12} UNICEF, "Children in the Russian Federation", Briefing by Carel de Rooy, 16 November 2004, p.7
\textsuperscript{13} Please refer to http://detirossii.ru/Libr. p. 2.
structure of the institutions specialized in the rights of the child but also in the attitude of the State agents, specialized in the protection of children's rights.\footnote{Please refer to http://detirossii.ru/ Libr. p. 2.}

1.3. International standards

The Russian Federation is the successor state of the Soviet Union with regard to the membership to the Convention on the Rights of the Child (CRC), the Convention Against Torture and Other Inhuman and Cruel Degrading Treatment or Punishment (CAT), the Convention on the Elimination of all kinds of Discrimination Against Women (CEDAW) including its Optional Protocol, the Convention on the Elimination of all kinds of Racial Discrimination (CERD), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR). Since its transformation into the Russian Federation the state has acceded to the First Optional Protocol to the ICCPR but it only signed the Optional Protocol to the CRC on the involvement of children in armed conflict and has taken no action concerning the Optional Protocol to the CRC on the sale of children, child prostitution and child pornography. The Russian Federation has also ratified the UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules); the UN Rules for the Protection of Juveniles Deprived of their Liberty.


On the regional level, the Russian Federation is a member of the European Convention on Human Rights and of the Framework Convention for the Protection of National Minorities. It has signed the European Convention on the Exercise of Children’s Rights. Unfortunately, no action was taken with regard to other Conventions of the Council of Europe, namely the European Convention on the Adoption of Children, the European Convention on the Legal Status of Children born out of Wedlock, the European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children, the Convention on Contact concerning Children, the European Convention on Social and Medical Assistance, the European Social Charter, the European Convention on the Repatriation of Minors and the Convention for the Protection of Human Rights and dignity of the human being with regard to the application of biology and medicine.

In April 2004, the Russian Federation ratified the UN Convention against transnational organized crime and the additional protocols: "The prevention and punishment of human trafficking, especially regarding women and children, and its punishment" and "The illegal immigration of migrants through land, sea and air".

Article 15 par. 4 of the Russian Constitution of 1993 states that "generally-recognized principles and norms of international law and international treaties of the Russian Federation are an integral part of the legal system of the Russian Federation. This means that the Russian Constitution not only accepts generally-recognized principles and norms of international law as part of Russian law but also the fact that such norms and principles should be placed side by side with norms of municipal Russian law. In conformity with article 15, par. 4 the Constitution gives priority to treaty norms over those of domestic law: "If other rules have been established by an international treaty of the Russian Federation than provided for by a law, the rules of the international treaty shall apply". An order of a plenary session of the Supreme Court of the Russian Federation, which was adopted in 1995, issued guidance to the general courts on application of the standards of international law in the examination of specific cases. It remains a matter of some urgency to provide the courts with further clarifications and
recommendations on this matter and especially concerning the application of the Convention on the Rights of the Child. At present, a large number of Russian scholars are researching the theoretical and practical aspects of this problem.

Despite a recommendation formulated in the last concluding observations of the Committee regarding the situation in Russia\textsuperscript{15}, the government hasn’t fully reviewed its legislation to ensure its conformity with the principles and provisions of the Convention, notably in relation with issues of torture, violence against children and juvenile justice.

As a result, OMCT would recommend the Government of Russia to adopt all necessary measures to ensure the full implementation of its provisions at the national level.

Another important element should be noted: practice shows that the Russian legislation is not currently applicable and implemented on the entire territory of the Russian Federation (examples will be given further throughout the report). Already in its 1999 Concluding Observations on the Russian Federation, the Committee has shown concern that the decentralization of responsibilities and actions from the federal authorities to their regional counterparts lacks sufficient guarantees to prevent disparities in the protection of children’s rights.\textsuperscript{16}

\textsuperscript{15} Concluding observations of the Committee on the Rights of the Child: Russian Federation, 10/11/99, CRC/C/15/Add. 110, par. 5, 6.
\textsuperscript{16} Concluding observations of the Committee on the Rights of the Child: Russian Federation, 10/11/99, CRC/C/15/Add. 110, par. 10, 11.
2. DEFINITION OF THE CHILD

The Russian Family Code defines a child as a person from birth to the age of 18.\textsuperscript{17}

2.1. Marriage

According to the current Russian legislation, the minimum age for marriage is 18 years. Yet, majority can be attained before 18 in exceptional cases: marriage below the age of 16 years may be permitted by the local authorities if there are valid reasons in conformity with art.13 of the Family Code of the Russian Federation of 1995.

OMCT would recommend that the Russian Federation properly apply its legislation so that, even in the instance of marriage from the age of 16, the rights of all persons under 18 be fully protected.

2.2. Education and labour

According to the Russian Law on Education (1992) and the Russian Constitution, schooling is compulsory from the age of 6 until 18 years old.

The Labour Code of the Russian Federation of 2001 prohibits regular employment for children who are less than 16 years old and also regulates the working conditions of children under 18 years old, including banning dangerous, night time and overtime work. Children may, under certain specific conditions, work in internship programs at the ages of 14 and 15. Moreover, according to the Labour Code, children are provided with full protection from any form of heavy, unhealthy or exploitative labour until 18 (as guaranteed by Art. 3.1. of the ILO 138 Minimum Age Convention and by the ILO 182 Convention on the Worst Forms of Child Labour ratified by the Russian Federation).

2.3. Minimum age of criminal responsibility

According to the 1996 Criminal Code of the Russian Federation, there is a setting of the lower age limit for criminal responsibility in an alternative way. More precisely, individuals who have reached 16 years of age at the time of the perpetration of an offence, have general criminal responsibility for all types of offence. For some types of offence, criminal responsibility commences at the age of 14: murder, premeditated causing of grievous bodily harm, premeditated causing of moderately severe bodily harm, kidnapping, rape, robbery with violence, etc.\textsuperscript{18}, i.e. most serious crimes. In this respect particular rules of procedure and sanctions will be applied to these child offenders.

\textsuperscript{17} Russian Family Code, 1998.

\textsuperscript{18} For more information please visit www.right-to-education.org/content/age/russian_federation.html
3. DISCRIMINATION

3.1. Racial discrimination

According to the Third Periodical Report on the Implementation by the Russian Federation of the Convention on the Rights of the Child, the Russian legislative framework does not contain any legal base carrying a discriminative, racist character.19 In 2002, a series of normative acts have been undertaken by the government in order to eradicate intolerance and discrimination. In terms of examples, one can name the law no 4 of the Russian Federation on mass media, which prohibits the use of mass media in order to bring about national hatred towards foreigners and intolerance, and the federal law no 16 about public associations, which prohibits the formation of public associations, actions and goals of which are aimed at creating social, racial, national and religious hatred. Also, the Labour Code of the Russian Federation contains a series of articles aimed at eradicating discrimination from the work sphere. For instance, in art. 3 of the Labour Code it is stated that nobody should be limited in working rights and freedoms related to his sex, race, skin colour, nationality, language, origin, social position (...) and other factors which are not related to the qualities for work of the respective worker.20

In conformity with the Committee’s recommendations regarding the Second Periodical Report on the Implementation by the Russian Federation of the CRC21, during the period 1998-2002, a special attention was given to the undertaking of measures seeking to reduce economic, social differences, as well as prevention of all types of discrimination concerning children or in the attitude towards children, including handicapped children.

A special programme for the socio-economic development of the Russian Federation for the period 2002-2004 provides a series of measures aimed at allowing access to all social categories to essential social services, like, for example, medical, social and educational services, the quality of which could apply to all categories, including children.

Still, practice of previous years shows us a picture which contrasts strongly with the measures and practices that were undertaken by the Government in 2001-2003.

In November 2001, the European Committee against racism and discrimination (ECRI) has supervised conditions of tolerance in 43 countries-members of the EC, including Russia. The issuing report on the state of discrimination against ethnic minorities points out to the fact that racism and xenophobia are still persisting in Russia.22 More precisely, experts point out in their report that Chechens and other Northern Caucasus nationalities, natives of the Middle Asia, Jews and refugees are especially suffering from discrimination.23 According to the experts, one of the main causes for discrimination is the existing system of permanent and temporary registration in conformity with the place of living, which has in itself a forcible character. Another reason for discrimination is insufficient execution of the Federal legislation on the regional grounds. The experts were also concerned by, in their opinion, too light punishment set by the Russian Justice for summons to hatred and violence against certain groupings of population.

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But discrimination does not stop here. The children of minorities also suffer from hatred and are persecuted and are often the first victims of discrimination. World Bank and UNICEF issued a project "The Changing Minds, Policies and Lives Project" in 2000 which faces the issue of children in public institutions.

From a social point of view, belonging to a minority group can increase a child's likelihood of being placed in an institution, particularly when combined with the other factors that so often face minorities, such as poverty.24 And these children do not have the same access to health and educational services, from which benefit the children of non-minorities.

3.2. Discrimination resulting from socio-economic difficulties within the family

One of the current problems of government's support to families in the Russian Federation is the fact that with each year the level of government's support to Russian families decreases. The main goal behind this policy of governmental aid is to allow, among other families, families with a criminal history to decrease the criminal record of the latter, increase the level of health of the families' children and increase their educational level. According to the international conference "Family and the future of Russia" held in Ekaterinburg in February 2005, as a result of governmental aid and taking into account a decrease in the growth of Russian population, there is a growing number of economically inactive people which means that some modifications should be adopted and implemented into the program of the governmental aid to families.25

At present, most of the governmental aid is directed towards so called asocial families. This means that they are families where one of the spouses or both lack work either for geographical reasons (ex. living in a secluded area), or for personal reasons (the person in question simply doesn't want to work given that he/she already benefits from the state subsidy for his/her child(ren)).26 As a result, the parent uses up all the money that was intended primarily for the basic needs of the child (health, education) and the child ends up with nothing. According to experts at the Conference "Family and the future of Russia", the main solution to this problem is, first of all, to create a complex program of state aid to all categories of families and not only to the asocial families with an individualized approach to each category. In the second place, according to the experts, it seems useful when dealing with asocial families to provide the latter benefits not in the form of money, but in natural form like, for example, food, clothing for children. This will act as a dissuasion for parents to use up their children's money.27 For the moment, no document has yet been adopted at the federal level that would allow a modification of the current system of governmental aid to Russian families.

Another subject of concern is the practice of discrimination against children without resident permits and their families. In September 1999 of up to 20 000 non-Muscovites, mainly Chechens and other people from the Caucasus were rounded up by the police, more than half of whom were refused official registration and a resident permit. Officials in Moscow claimed that some 10 000 non-Muscovites who lacked resident permits were refused registration and were consequently deported from the city.28

24 Please see "Children in Institutions" at http://www.vpu.it/socpedagogika/unicef/krrtm.
3.3. The situation of the homeless children

The situation of the homeless children does not seem better than the one of the children from poor families and from minority families. There are three main reasons for a child to become homeless: in the first place, family crisis; in the second place, the worsening of the socio-economic conditions of life for the Russian population in general; in the third place, a lack of a social assistance system dealing with homeless children in the Russian Federation.²⁹

Society tends to see homeless children as a failure and as a drag for the government and in this context it's not surprising to learn that homeless children do not have access to public health services in Russia.³⁰ According to Carel de Rooy, UNICEF's representative in the Russian Federation, there are 14 shelters catering for homeless children in Russia, where homeless children can have access to basic healthcare services, food and water, clothing.³¹ It should be noted that in such shelters as "Children without home", "Love's bridge" homeless children are allowed to spend the night only on the condition that they quit substance abuse and resume their studies.³² This shows that the ultimate goal of such shelters for street children is to allow the latter to come back to a normal life and everything that accompanies it: studies, access to health care and other social services.

Coming back to a normal life means recreating a normal family structure, without domestic violence occurring at home since, according to many researches, violence appears as the main reason that in the first place makes the children leave home. At present, one can remark that the Russian educational system still has a role to play in diverting homeless children from the street. More precisely, by utilizing the potential of qualified educators, psychologists and social workers, educational establishments can be very effective in dealing with the problem of street children. Surveys conducted by several international organizations like, for example, the International Labour Organization, show that most street children are prepared and willing to study.³³ However, the degree of intervention on the behalf of the Russian educational system should be different for different categories of street children.

3.4. The situation of HIV-child victims in Russia

According to official statistics³⁴, from the moment that HIV appeared in Russia, the number of persons dead from this virus amounts to more than 2,000, among them children born from HIV-infected mothers. Since Russia, in terms of its geography, is a big country, this number of HIV-infected people doesn't appear so big (but these remain “official” figures). However, if the deadly virus continues to spread with the same pace as it does today, then by 2015 the number of Russians who die from HIV-virus will amount to approximately 10 million. The Russian government does not provide necessary means in its budget in order to target the HIV problem; the latter does not yet appear to be on the government’s priority list. The current Russian health system spends 45 $ annually for the treatment of every registered case of HIV-infected person³⁵ which is far from the western countries average.

The Russian government still needs to do more in terms of providing health services to people infected with HIV in general and for children born with HIV in particular. The latter could be done by providing more funds to the creation of special homes for HIV-infected children, and to special health services that these children need.

²⁹ Please see “The need for a federal program in order to promote children's rights in Russia” at http://www.mirv.ru/cgi-bin, p. 1.
³⁰ Please see “‘Child by child’, group aids homeless street kids” at http://www.familycare.org/network.
³¹ Please refer to “Gap widens between rich and poor” at http://www.abc.net.au/worldtoday.
³⁴ Please refer to http://www.dental.a.ru/comments.php?id=D977
³⁵ Please refer to Public-Interest-Law-Network at piln@law.columbia.edu.
The problem of HIV infected children has become acute since 1996, when the virus started to spread thought the sphere of drug users, and the number of people infected with the virus increased rapidly. According to Evgeny Voronin, the director of the Scientific centre of aid provision to pregnant HIV-infected women and children with HIV located in Oust-Ijorn, Russia, more than 200 000 people are affected at present with the HIV virus, 150 000 of them are women. This fact has largely contributed to the increase in the number of children born from HIV-infected mothers. Therefore, the following question becomes important: how should the Russian society treat these children?

Before answering this question, there's one fact that should be underlined: Out of all the children born from HIV-infected mothers, only 10-15 % of them will be infected with HIV. The remaining 85-90 % are simply children born from HIV-positive mothers. But practice shows that society ignores this fact: at present, a large number of these children born from HIV mothers are left in the infection division of the hospitals and the hospital staff treats them as if they represented a danger to everybody's health.

In fact, there are two possible attitudes towards HIV-infected children: either the society accepts them as human beings who have the same rights and freedoms as other citizens; or the society rejects them and consequently the HIV-infected children become outsiders. Mr. Voronin provides the following example of the case of a child who was rejected by the society.

The Centre directed by Mr. Voronin once received for treatment a 3-year old girl from a hospital specialized in infections. From the information that was provided to the Centre about this small girl, she was kept previously in the hospital in a separate small room and the hospital personal avoided contact with her. In the first three years of her life, the girl was only given food and practically nobody ever came to visit her. From the science of paediatrics, it is known that the development of the child essentially takes place in the first years of his/her life and therefore the first three years are considered to be crucial in the life of the child. As a result, when the small girl was brought to the Centre, her slightly savage behaviour reminded the staff very much of Mowgli, the hero of R. Kipling's book: whenever the doctor switched on the light or came into the room, the small child was very afraid and hid under the blankets. She was also afraid of adults.

The Centre's staff tried to improve the girl's behaviour by hiring the best psychologists of Saint Petersburg, an individual tutor but unfortunately didn't succeed in changing anything in the personality of the small girl because it was too late. It should be noted that this little girl, although being born from an HIV-infected mother, was not herself HIV-infected.

This example shows that the Russian society still has a lot of improvement to achieve in the sphere of children born from HIV-infected mothers. More precisely, according to Mr. Voronin, the Russian society should stop considering children born from HIV-mothers as children who are condemned to a quick death and therefore who have no perspective, and who are consequently isolated. Instead, society should give these children a chance: practice shows that even HIV-infected children when given the necessary treatment may conserve a normal immune system, which will allow them to live the same life that they would have had without the HIV-infection.

3.5. Living conditions of children-orphans in state institutions

In addition to difficulties for establishing their legal status, children-orphans face various suffering situations. First of all, it should be noted that there exists a lack of cooperation and linking between the institutions and organs which specialize in determining the children who are in need of protection from the state such as orphans. Second, these institutions often lack resources which would have

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allowed them to provide the orphans with qualified help and assistance. Take the example of the Boarding House for Children no 11 of the Department of the Social Protection of the Population. This educational house is specialized in providing assistance to handicapped orphans. However, in practice one can remark that there is a strong lack of night time teachers, nurses specialized in caring for handicapped children, psychologists, nutritionists, social assistants. The need for night time teachers comes from the fact that handicapped children are often aggressive, have asocial behaviour, which makes it difficult for the personal to establish night time control over these children, when only nurses are on duty. There is also a lack of resources for the organization of a summer vacation for the handicapped children.

Moreover, children-orphans often suffer from violence. According to the TV broadcast "To survive in children institutions", in 2004, the Office of Attorney-General initiated and conducted a total revision of children institutions in Russia. The situation in many of these institutions was found terrible. As a result of the survey, a number of criminal prosecutions were started against a considerable number of teachers. They were accused of violence, denigrating attitude towards children, humiliation of children, theft of children's food, psychological and sexual abuse. Frightening figures were cited: at present, the number of officially registered orphans in Russia is approximately 700,000, whereas after the Second World War, with so many people killed and families destroyed, there was 678,000. Every year about 40,000 children in these institutions become victims of their adult educators. Every year up to 3,000 children try to escape from those institutions.

OMCT welcomes the efforts to bring the facts into open and the mobilization through the mass media of general public in order to solve this problem which attest that the Russian government has become serious in implementing its obligations on democratic and humanistic values, in this specific case, concerning children. But it remains concern over the actual horrible situation of children living in state institutions.

3. 6. Child victims of the war in Chechnya

In the second half of 2002 onwards, there has been an intensification of hostilities taking place in Chechnya between Chechen armed groups and Russian military forces. In the wake of the international political climate having resulted from the 2001 September 11th terrorist attacks in the US, some children have been directly affected in Chechnya by the “fight against terrorism”.

Along with other grave violations of the rights of ethnic Chechens (extradition of men wanted by Russian authorities without court decision, arbitrary execution of suspects by Chechen rebel forces under obscure circumstances, etc.), some children were ill-treated, tortured and stigmatized as suspects of terrorist acts. This fact was underlined by Amnesty International in its statement on the Rights of the Child in Russia, dated of 10 October 1999: "The Russian Federation was also criticized for serious violations of the rights of children during the armed conflict in the Chechen Republic, including involvement of children in combat, the violations of the provisions of international humanitarian law and the treatment of internally displaced children. (...) The Russian authorities should provide all necessary protection and assistance to the thousands of internally displaced children and children living in the area of conflict in Chechnya.”

An extreme example of this violation of the rights of the child is the fact that, according to the statistics, during the years of Russia’s war against Chechnya 40,000 Chechen children have been killed. According to Alexander Podrabinek, the author of the article “Terror and children”, ironically, the death of these 40,000 Chechen children did not seize the international attention as did the Beslan
tragedy and worst of all the death of these 40 000 children seemed to pass unnoticed by the Russian government. These children were mere victims of an armed conflict between Russia and Chechnya. As the author says "Until Russia stops the violence in Chechnya, terrorist war will continue". 

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4. PROTECTION FROM ALL FORMS OF VIOLENCE

The questions of physical, sexual and psychological violence directed towards children are covered in the Criminal Code by articles 106, 126, 127, 131, 132, 134 135, 150, 151, 152, 153, 154, 155, 156, 157, 230 and those articles of the Criminal Code that concern crimes against the dignity of the person. The Criminal Code also provides more severe punishment for those who commit the above-mentioned crimes against children, for example, for the following crimes: torture (art. 117); infecting with venereal disease (art. 121); infecting with HIV infection (art. 122); stealing a person (art. 126); illegal deprivation of freedom of the person (art. 127 part 2); trafficking of people (art. 127); the use of child labour (art. 127); rape (art. 231 part 2). The Russian legislation has recently examined a list of legislative acts which aim to increase the responsibility for crimes committed against children. For instance, in December 2002 the parliament considered a law that would enlarge the framework of legal rights for children against all kinds of abuses. A modification of the Criminal Code was adopted in 2003 by a federal law that increases the penalty for the commitment of a crime of psychological abuse, sexual abuse and sexual exploitation of children.46

4.1. Violence, abuse and neglect within family framework

According to Tatyana Sudakova and Sally Stoecker, authors of "Domestic violence as a Factor Contributing to Child Homelessness in Russia"47, the notion of "domestic violence" in the West is often used to describe abuse inflicted by or against one's spouse or intimate partner and does not usually connote abuse of children or minors. In the legal sense, the term of family violence has broader application in that it covers not only spousal abuse but abuse between parents and children as well. Although both terms - domestic and family - indicate familial or relational ties among family members, it is also important to have a broad understanding of the term "family member" because in many cases children reside with persons who are not blood relatives. In this sense, "child abuse" would be a better candidate here but one should remark however that the abuse, be it physical, emotional or psychological, can result from children witnessing violence between other family members that may not be directed at the child. Therefore, the authors consider that it would be more appropriate to employ the term "family abuse" in order to have a broader understanding of the problem than that associated with child abuse and domestic violence.48

Abusive behaviour against children and youth should be understood as an action or threat of action that is characterized as being physical, psychological, sexual or emotional aimed at a child victim that can affect her/his life, health, or sexuality and that violates criminal law.

Physical abuse regroups actions against a minor that cause physical pain and suffering. Psychological abuse regroups actions against a minor that cause psychological suffering or a high degree of psychic tension. Sexual abuse means violation of a minor's sexual inviolability, accompanied by physical and/or psychological suffering. Finally, emotional abuse regroups actions against a minor that cause emotional stress.49

The Russian legislation covers the notion of violence in general under article 21 para. 2 of the Constitution of the Russian Federation. The forms of violence which are covered in the same article

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47 Please refer to "Domestic violence as a Factor Contributing to Child Homelessness in Russia" at http://www.american.edu/tracco/Publications.
48 Please refer to "Domestic violence as a Factor Contributing to Child Homelessness in Russia" at http://www.american.edu/tracco/Publications, p.4.
49 Please refer to "Domestic violence as a Factor Contributing to Child Homelessness in Russia" at http://www.american.edu/tracco/Publications, p. 5.
are: physical, psychological, sexual, abuse, degrading and ill-treatment, violence through media that may cause a negative impact on health and spiritual development.

In the Concluding Observations of 1999, the Committee recommended that the Russian Federation gives special attention to the problem of ill-treatment, neglect and abuse, including sexual abuse, of children both within and outside the family (para. 32). The Committee also stressed (para. 33) the need for information and education campaigns to prevent and combat the use of any form of physical or mental violence against children, in accordance with art. 19 of the Convention on the Rights of the Child.

According to the authors of “Domestic violence as a Factor Contributing to Child Homelessness in Russia”50, the modern family, while being charged with performing child-raising functions, is faced with an assortment of problems. In many cases, families are run by only one parent or other relatives such as the grandmother. In many cases, studies show that this is accompanied by amoral parental or guardian behaviour and psychological dysfunction in the family. In fact, the pathology of family relations affects various aspects of deviation in a child’s behaviour. Homelessness, crime and drug addiction appear to have one thing in common: social maladjustment, the roots of which are to be found in the problems of the family. But before a child becomes socially maladjusted, the child or youth’s rights to full development and self-realization in society have often been violated. Therefore, when a child becomes a law breaker, it is a way signalling the society that her own rights have been violated.

The two factors that contribute to a family’s ill-treatment of children are the following: the pervasiveness of poverty in Russia and the high rate of divorce. The pervasiveness of poverty in Russia requires many parents to work 2 or 3 jobs simultaneously which allows them little time to spend with their children and to monitor their behaviour properly. Separated, single parents are often victims of stress, anxiety or depression and they tend to be rude and aggressive, becoming a source of violence against their own children. According to reports of Russian police agencies, the number of parents and guardians who fail to fulfill or unreliably fulfill their child-rearing responsibilities continues to grow. For example, in 1996 the internal affairs agencies of the Russian Federation investigated 182,700 parents who failed to fulfill their responsibilities; the number had increased to 280,700 in 2002.51

According to the researches that have been conducted in Russia by sociologists, psychologists and doctors, one fact appears as conclusive: it is difficult to establish a direct link between family abuse and homelessness, because the abuse is hidden within and confined to the family. From the certain criminal court cases of abusive behaviour against minors and criminal cases of crimes committed by abused minors, one can see that the violence inflicted upon the child by his parents or guardians is accepted by children as normal because they are not aware of other forms of treatment by their family members. Medical records show that children often enter the hospital with signs of severe physical abuse. For example, traces of torture and mutilation are found on their bodies as well as evidence that they were nearly starved to death. Ironically, the doctors very frequently ignore these bruises on the child’s body because the reason the child got these bruises is not their business, since this subject relates to the private sphere of the child – his family.

Why do statistics reveal only a few instances of parents being held accountable for the crimes committed against their child when family abuse is so widespread? There are several explanations to this. First, it should be noted that a serious preventive mechanism for law enforcement work/investigation in this area is hindered by a shortage of special services, absence of a single coordinated system of exposing these facts or proof and means of bringing the guilty parties to account for their crimes of neglecting parental responsibilities in child rearing, particularly if such actions are

50 Please refer to "Domestic violence as a Factor Contributing to Child Homelessness in Russia" at http://www.american.edu/tracco/Publications, p. 7.
51 Figures from the Commission of Minors.
combined with ill and cruel treatment of children. Second, it’s the fact that law enforcement agencies note the difficulties of collecting evidence that could help them solve crimes and bring the members of a family to court for failing to fulfil or fulfil properly their child rearing responsibilities. 

4.2. Children’s economic exploitation

a) Child labour

According to the ILO report "In-depth analysis of the situation of working street children in Moscow", child labour, although prohibited by Russian law, has become widespread in recent years in the Russian Federation. The social and economic challenges of the past years have contributed to the escalation of child labour in Russia, particularly in Moscow. In fact, Russian legislation forbids the employment of children under the age of 15; according to art. 173 of the Labour Code, children aged 14 may only work with the consent of their parents or legal guardians. Minors can only be hired for light work which does not harm their health and does not prejudice their attendance at school. However, evidence collected by the ILO experts suggests that legislation banning child labour is not always a sufficient deterrent to the growth of this market. According to experts, today’s problems of child labour include not only neglected children but also children subjected to exploitation.

The current Russian legislation provides the children with considerable protection against heavy and hazardous work. The Labour Code also carries a restriction on heavy and dangerous forms of child labour as well as work in dangerous and harmful conditions. In conformity with art.175 of the Labour Code, this comprises such activities as gambling, night clubs, alcohol production, alcohol, tobacco, toxic substances transportation and trade. These types of work are intended to be performed only by people who have reached 18 years of age.

According to the research conducted by ILO, the trade unions have lost much of their influence and can hardly protect children’s rights on the labour market. The city and district employment services appear to have greater legal, administrative, financial and information resources and therefore greater potential for tackling the problem. In terms of example, the introduction of special employment assistance services for children under 15 could help meet the legal demand for jobs and partly fill jobs unwanted by adults. Greater commitment by these government institutions could bring about an improvement in the situation.

Child labour occurs most of the time in the informal sector of the workforce. Children cannot be officially employed for two reasons: first of all, Russian labour legislation prohibits entering into a contract with children under the age of 14 (art. 173 of the Labour Code) and second, in a number of sectors workers are frequently hired informally without due registration. It is often the case with temporary jobs in the trade or service sectors where all payments to workers are made in cash either daily or at the end of work. The ILO experts identified about 30 jobs in which most child labour is used. Non-criminal jobs can be divided into the following categories: retail; car services; apprenticeship in small workshops and assistance to self-employed workers; courier services; collection of salvage; casual street services.

Please refer to "Domestic violence as a Factor Contributing to Child Homelessness in Russia" at http://www.american.edu/tracce/Publications, pp. 8-13.


Also, long hours of work are one of the main hazards to the health of working children. Among other hazards, one can name the risk of injuries and diseases originating from lifting of weights, lack of individual means of protection and abuse by employers and other persons.

According to the experts’ survey, current labour inspections reveal that despite some improvements the rate of violations of labour rights and the legitimate interests of under-age employees by employers is still high. On-going statistical surveys conducted by the federal Labour inspection indicate that in the year 2000, accidents at work took the life of 32 under-aged workers, 19 of them in the agricultural sector. The deaths occurred in Karelia, Sakha (Yakutia), Tatarstan, Kabardino-Balkaria, Udmurtia, Chuvashia, Krasnoyarsk krai, Krasnodar krai, Vologda, Kaluga, Kursk, Nizniy Novgorod, Novosibirsk, Sverdlovsk, Smolensk and Yaroslavl regions and in Moscow. The common causes of death were: 1) failure to administer proper training and work safety instructions prior to work, non-assignment of foremen to under-age employees; 2) use of faulty equipment, violations of process standards, ineffective workplace and process organization; 3) assignment of under-age employees to hazardous and heavy jobs. Wherever violations were detected, the State inspection applied statutory sanctions against the enterprise management. These sanctions included: administrative instructions, administrative and disciplinary court actions, and even suspensions of work at some individual production areas and units.¹⁰

b) Sexual exploitation

Russian legislation treats as felonies the involvement of children in prostitution, and pimping, pandering of minors, as well as unlawful distribution of pornographic materials. According to the new Criminal Code, only children under 14 are protected against being involved in prostitution. Indeed, according to art. 134, 135 of the Criminal Code of the Russian Federation, non-violent lewd actions involving a person over the age of 14 do not constitute a criminal offence. Such a legislation makes it possible to use persons between 14 and 18 years old, that is to say children according to the national and international law, as prostitutes or involve them in pornography.

According to the Criminal Code of the Russian Federation, the following acts are considered as crimes against the individuality of a child: rape; sexual act performed by an 18-year old person with a less than 14-year old one; depraved actions made to a person who’s less than 14 years old. National statistics show that in 2001, as compared to 1998, there has been noted a decrease in the number of crimes of sexual character, including crimes accomplished by 18 year olds towards less than 14 years old. However, this may partially be explained by the decrease in the sexual inviolability of a child, the latter being reduced from 16 to 14 years of age.¹⁰

The Federal Law of June 2002 about the modifications to be implemented into the current Criminal Code of the Russian Federation provides, among other things, an increase in the penalty due for the crime of sexual exploitation of children and their forcible involvement into pornography. This law defines for the first time in the history of the Criminal Code the terms of prostitution, pornographic production, television programs carrying a sexual character.

§ Pornography

The Criminal Code of the Russian Federation prohibits the spreading and advertising of pornographic materials and related objects. In 2001, 442 such crimes are registered. Another thing that should be noted here: Internet plays an important role in increasing the number of produced and sold child pornography.

Pornographic child videos can be obtained at nearly every radio market in Moscow. For example, at Kursky railway terminal at least 4 kiosks offer such videos at night-time. Each tape costs between 70 and 200 roubles.61

§ Prostitution

In present-day Moscow teenage prostitution is a smoothly organized and highly lucrative business. Experts estimate that it involves over 100 thousand people, 20-25 % of whom are minors. The different forms of prostitution are the following: street prostitution; call-girl prostitution (advertised in tabloids, specialized publications and the Internet); parlour prostitution (salons, massage parlours, sauna baths, etc.); prostitution in bars, clubs, discs, etc. Children are involved in all these different forms of prostitution.

Children are recruited through a complex system of informers. Informers are persons who work in dormitories of vocational schools, colleges and college preparation courses, restaurants, beauty parlours, saunas, etc. There exists also a regional network of informers who recruit girls from all over Russia and the CIS by offering them highly-paid jobs in Moscow and forcing them into prostitution afterwards. One of the reasons for underage girls to become engaged in prostitution is, in the case of migrant girls, the need to support impoverished families outside the capital. Groups of 3-5 such girls share 1-2 bedroom flats or dormitory rooms at vocational schools, technical schools, colleges where they work or study.

Approximately 2.7 % of the children engaged in prostitution surveyed stated they worked under threat (the ILO Convention classifies forced or compulsory labour as one of the worst forms of child labour which demands immediate intervention).62 Paradoxically, they become dependent on pimps for appointments and security. For instance, on average, children engaged in street prostitution earn between 500 and 1500 roubles daily: half of what the client pays. The remaining sum goes to the pimp who covers the cost of protection, drivers and other overhead expenses.63

Children are actively exploited at various criminal “hook-up” points offering girls with the sole purpose of “skinning” the client (ex. putting him to sleep with drugs and then robbing him, etc.). Points usually operate for no longer than 1-2 days in different parts of the city and offer only child prostitutes.64

Call-girl prostitution is widely spread in erotic tabloids sold in Moscow. These tabloids usually contain classifieds advertising call services in indirect but unambiguous wording, offering services of girls under 13. The Russian part of the Internet contains many easy-to-find sites which advertise home services or visits to private house-brothels. These sites often offer girls “from 12 years old and up”.

61 Third periodic report on the implementation of the rights of the child in the Russian Federation, CRC/C/125/Add.5, p. 42.
62 Third periodic report on the implementation of the rights of the child in the Russian Federation, CRC/C/125/Add.5.
63 Third periodic report on the implementation of the rights of the child in the Russian Federation, CRC/C/125/Add.5, p. 41
64 Third periodic report on the implementation of the rights of the child in the Russian Federation, CRC/C/125/Add.5, p. 40.
Pimp-controlled prostitution is not frequent in so-called hangout places. They are mostly popular among young girls from the peripheral districts of Moscow, who go to these places in order to make a little money to "chill out" afterwards.\(^65\)

Prostitution may also come in a veiled form. Exerts at the ILO estimate that approximately 100 firms in Moscow specialize in "procurement", which is another term for "veiled prostitution". The procedure used by these firms is simple, reliable and legally impeccable: the firm in question maintains a database of young boys and girls aged 13 and up "for any taste". A set of 10-15 such ads complete with photos can be obtained for 80-200 rubles. Potential clients then contact girls on their own. Both the firms and the law enforcement authorities admit that to launch a case against a client, person involved in prostitution or "procurement" firm would be near to impossible. Even in the case when a client uses the service through this type of prostitution, payment will not likely be proved in court.

\section{Trafficking}

The Criminal Code of the Russian Federation contains a legislation establishing criminal responsibility for the trafficking of children, which includes the buying and selling of a child, or actions undertaken in order to transfer or seize the child. In 2001, 16 crimes falling under art. 152 of the Criminal Code were registered and in 2002, 10 such crimes were registered. During the investigations of the crimes committed under art. 152 in 2001 and 2002, 53 victims of trafficking of children were heard.

According to the U. S. State Department's Trafficking in Persons Report of June 2004\(^66\), Russia is a major source country for women and girls trafficked globally for the purpose of sexual exploitation. Russia appears to be also a transit and destination country for persons trafficked for sexual and labour exploitation, which includes sex tourism, from regional and neighbouring countries into Russia, and on to the Gulf States, Europe, and North America. In fact, a 2004 ILO report estimated that 20% of the five million illegal immigrants in Russia are victims of forced labour. Internal trafficking from rural to urban areas, especially Moscow, causes concern too.

According to the ILO experts, the Government of Russia does not fully comply with the minimum standards for the elimination of trafficking; however, considerable efforts are being made in order to overcome this lack of implementation. The lack of implementation consists in the following: Russia has been placed on Tier 2 Watch List\(^67\) in 2004 for lack of progress on victim protection measures, and because the new coordinating mechanism had not yet sufficient time to show results. Also, reports on trafficking-related complicity among Russian officials are a continuing concern and the implementation of the anti-trafficking amendments of the Criminal Code have not yet shown results. The Government should continue to stay engaged on trafficking by implementing protections for trafficking victims immediately, including foreign victims in Russia, and by focusing prevention efforts towards vulnerable groups. The actions that aim to root out official complicity in trafficking should also be reinforced.


\(^{67}\) The US State Department is required to report to US Congress annually whether foreign governments meet the minimum standards set for the elimination of trafficking as detailed in the U.S. Trafficking Victims Protection Act of October 2000. For this purpose a list has been set up and is updated each year. It is divided in three "Tiers" in which Tier 1 refers to countries whose governments comply with the minimum standards of the US Trafficking Victims Reauthorization Act of 2003; Tier 2 refers to countries whose governments do not fully comply with the minimum standards of the Act but "are making significant progress" in complying with those standards; and Tier 3, in which countries "whose governments do not fully comply with the minimum standards" and are not doing much to do so. The 2004 list includes 42 countries classified under a new category, called a "Tier 2 Watch List" which gathers countries, while supposedly trying to comply with the US Act's standards, have recorded increases in the number of victims of trafficking.
On the level of prosecution of the criminals of trafficking, in December 2003 President Putin signed legislative amendments to the Criminal Code outlawing trafficking in persons and forced labour, and expanding liability for prostitution-related offences, with abuse of official position being considered as an aggravating factor. Although investigations and prosecutions on trafficking under this new legislation were initiated during the reporting period, no convictions were reported and still more prosecutions were underway under pre-existing trafficking-related legislation. According to the ILO experts, seven members of a criminal gang were sentenced for acts involving recruitment and sexual exploitation of children; 20 prosecutions were ongoing for the sale of minors; six defendants were charged with kidnapping for internal trafficking for sexual exploitation; six criminal organizers were arrested and placed in pre-trial detention on trafficking-related charges involving the trafficking of 43 women to the United Arab Emirates and Thailand. The government reported on accomplishing one anti-corruption action targeting an organized crime group in the Ministry of Interior suspected of, among other things protecting prostitution businesses. As a result of this action, the suspects were arrested and placed in pre-trial detention. On its own behalf, the Russian government co-sponsored a regional law enforcement conference to establish working-level cooperation on specific cases and a new resolution for cooperation. The Government also assisted other governments in their investigations of trafficking to Russia.

On the level of protection of the victims of trafficking. The Russian State Parliament Duma did not pass trafficking victim protection legislation but some progress was noticed on the level of the legislation regarding passage witness protection. Still, there is much work to be done in the following spheres: defining the status of the trafficking victims under Russian law; elaborating specific mechanisms to assist or protect them; instituting a victim screening or referral process in Russia. On the positive side, one should mention that the Government issued instructions to its consulates regarding assistance to Russian trafficking victims, and assisted in returning 33 victims trafficked from the United Arab Emirates.

On the level of prevention, although high-level government officials addressed the issue of trafficking in the media, the government did not authorize budgetary allocations for prevention programs. Moreover, there has been no focusing of prevention activities towards vulnerable categories of population, such as educated women between 18-34, orphans, street children, and foreign labourers. In April 2004, the government announced the formation of a central governmental authority to coordinate implementation of anti-trafficking policies. The Government hosted a national NGO Conference that draw widespread media attention. The Government continued to cooperate with NGOs, and an estimated 30 % of NGOs, according to the experts, reported receiving some local government financial or in-kind support for anti-trafficking projects. One regional government collaborated with an anti-trafficking NGO in order to produce a list of guidelines for Ministry of Interior employees working with children and trafficking victims.

It should be noted that at present the Russian Federation is considering the possibility for ratification of the Alternative Protocol to the Convention on the Rights of the Child related to the trafficking of persons, child prostitution and child pornography. Still, representatives from the Russian Federation have participated in the Second World Congress against commercial sexual exploitation of children, held in Yokohama in December 2001, as well as they participated in the preparatory conference related to the Congress, organized by the Council of Europe, held in Budapest in November 2001.

4.3. Street children

Homeless children are one of the most vulnerable category of people in the Russian society. It exists several reasons why a child lives in the street but more often it is due to difficult family background. Sometimes, parents themselves force their children to beg on a regular basis and thus groom them to

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become homeless juvenile whether they realize it or not. Living and surviving in the street is in itself a situation of violence towards children but it is often a basis for further abuses. Most of the street children become indeed addicted to alcohol, drugs and cigarettes or break the law or are victims of various kinds of exploitation.

Whatever the grounds of his/her situation, in practice, the child is on the street as a rule for a long period of time and his territory changes and expands over time. The majority of children who beg are very young, six to ten years of age. Another concern is the fact that, after learning to get money “the easy way” and having learned how to survive, children appear reluctant or refuse to go to a shelter or other institution because they know that their freedom will be curtailed. In other words, they are used to doing what they want, when they want and those habits are hard to change and this makes their reinsertion in the society more difficult. The best way to prevent children to live in the streets is certainly to fight against the roots of this problem (socio-economic difficulties).

Most working street children are confronted with the work-or-die dilemma and they undertake casual jobs to earn a little pocket money. Still, the ILO survey already mentioned shows that for some children street work is a major if not the only source of living. This was the case with about one third of the sample of street children who filed out the ILO questionnaire on the work of street children. Some children work to afford more and better food (31.5%), others rely completely on street work to survive (27.2%). This is predominantly the case among children who happen to be involved in prostitution (77.9%) and criminal activities (56.9%).

Analysis of the root causes of child labour indicates that in most cases the problem can be partially alleviated by launching relief programmes to assist street children and their families financially. For certain categories of children, in particular, for children who work in order to buy drugs a different kind of response is needed. In fact, although this last category represents only a small part of the total number of street children, it is the latter category that requires immediate intervention from the government.

4.4. Prevention from violence - What can the government do in order to safeguard the rights and interests of children?

From its past, the Russian Federation has inherited a complex multidivisional system of agencies responsible for the enforcement of the rights of the child. The system consists of specialized departments for education, healthcare, etc. and cross-departmental bodies like prosecution offices, committees for minors and ombudsmen's offices. Separate laws and other regulatory instruments define the responsibilities of the latter groups of agencies concerning minors. According to experts of ILO who conveyed the survey on the work of homeless children, there have been achieved significant steps in the sphere of human rights in Russia; by establishing the protection of human rights as the uppermost priority of the state, the Constitution of the Russian Federation grants its citizens a large scope of possibilities for defending their individual rights and liberties. NGOs and governmental organizations both see enforcement of the rights of the child as part of their mission. The ILO survey shows that enforcement of the rights of the child and detection of violations is an extremely pressing concern, especially today when very few children have access to the effective use of procedures intended for the protection of their rights. The obstacles that arise in the application of such procedures are both objective and subjective. For instance, in many cases their limited legal capacity prevents children from seeking help from state bodies (including courts), requiring them to act through formal representatives. In addition, a situation where a child's rights are violated by his/her formal

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representatives is not covered by legislation. In general, children are not knowledgeable or competent enough to defend their rights.

Although big steps have been done by the government in order to implement on the national level the basic rights of the child, there is still much more work to be done in order to assist the least protected social groups of children, in the first place orphans and children without parental care, as well as children from low-income families. Ways to assist these categories of children may include the following: strengthening the control of federal institutions over execution of federal laws and programmes aimed at protection of the rights and social welfare of orphans and children without parental care; preparing and implementing a series of organizational and legal measures aimed at strengthening co-ordination between departments in the placement of children abandoned by parents.\(^7\)

5. PROTECTION FROM TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

5.1. Analysis of the legal framework

a) Prohibition of torture

Torture is explicitly prohibited under various provisions of the Russian law:
- The 1993 Constitution of the Russian Federation states in article 21 (2) that “no one shall be subjected to torture, violence or other cruel, inhuman or degrading treatment or punishment. No one may be subjected to medical, scientific or other experiments without voluntary consent”.
- Torture is also prohibited in articles 9 of the Criminal Procedure Code and 12 of the Criminal Execution Code, as well as by a number of legal acts such as article 5 of the Law “On Police” and article 4 of the Law “On the confinement of suspects and defendants”.

Despite torture’s prohibition, there was no definition of torture until a reform of the Criminal Code (CC) in 2003. It was only invoked as an aggravating circumstance in case of ill-treatment (article 117 CC) or coercion to give evidence (article 302 CC). It was generally classified as abuse of power (article 286 CC). Despite the absence of special provisions in the Russian criminal law criminalizing torture as such, officials who had committed acts of torture could be prosecuted under those provisions.

However, this situation was not satisfying mainly because none of provisions above mentioned covered the full scope of acts that constitute torture under the definition set out in the UN Convention Against Torture (articles 1 and 4). Moreover, as underlined by the Moscow Helsinki Group, “the absence of the definition of torture in the national legislation contributed to the misunderstanding on the side of the law enforcement bodies of the obligations, taken by the Russian Federation under the Convention Against Torture, (...) and the International Covenant on Civil and Political Rights”.

In May 2002, the UN Committee Against Torture repeated for the third time its recommendation that Russia should criminalize torture and define it in conformity with the Convention Against Torture. Indeed “the designation of torture as an aggravating circumstance for some enumerated cases does not satisfy the requirements of articles 1 and 4 of the Convention”.

Therefore, the State Duma finally adopted the Federal Law of 8 December 2003 “On the Introduction of Changes and Amendments to the Criminal Code of the Russian Federation” which defines torture, amending article 117 CC with the following paragraph: “By torture in the present Article and other Articles of the present Code is understood the causing of physical or moral sufferings for the purpose of coercion to give testimony or other actions contrary to the will of the person, and also for the purposes of punishment or other purposes”. Articles 286 and 302 have also been amended (see Annex p. 36)

74 Olga Shepeleva, Moscow Helsinki Group, Russian Legislation Now Features the Definition of “Torture”, available on www.mhgru.ru/english/2F76988B.
75 Olga Shepeleva, Moscow Helsinki Group, Russian Legislation Now Features the Definition of “Torture”, available on www.mhgru.ru/english/2F76988B.
76 Olga Shepeleva, Moscow Helsinki Group, Russian Legislation Now Features the Definition of “Torture”, available on www.mhgru.ru/english/2F76988B.
77 Conclusions and recommendations of the Committee Against Torture: Russian Federation, 06/06/2005, CAT/C/CR/28/4, para. 6 (a).
78 The State Duma is the lower house of Federal Assembly of Russia (Parliament), the upper house being the Federation Council of Russia.
However, this definition of torture is narrower than the one in article 1 of the CAT. Moreover the definition of torture in article 117 CC failed to fully comply with the CAT’s one because it does not concern torture committed by official agents specifically. In this respect officials will be rather prosecuted on the grounds of articles 286 or 302 instead of according to article 117.

The new wording of article 302 (compelling to give testimony with the application of torture) does not fully comply with article 4 of the CAT with respect to the attempts to apply torture which is not punishable. It is also ambiguous concerning the person(s) who shall be prosecutable for the offence – the immediate torturer, the investigator, with whose knowledge or acquiescence the torture was used, or both.\(^{80}\)

Thus, despite the recent definition of torture in the Criminal Code, OMCT remains concerned over the absence of criminalisation of torture as such. Moreover, in the absence of any particular definition of torture in cases where the victim is a child, OMCT also encourages Russia to provide more severe penalties in those situations.

Concerning especially the sanctions provided under criminal law, no punishment or other measures applied under criminal law to an offender do not have the aim of causing physical suffering or degradation. Neither the death penalty, nor life imprisonment can be applied for an offence committed by persons up to 18 years of age. In conformity with the Punishment Code of the Russian Federation, the use of the correctional legislation is based on strict observance of the guarantees of protection against torture, violence and other cruel or degrading treatment of convicted persons.\(^{81}\) Moreover, higher penalties are provided for a number of offences knowingly committed against a minor. Indeed, according to the Criminal Code, when a crime causing brain damage to health is committed against a minor, it will be punished more heavily than if the crime was committed against a non-minor. For example, in the case of a rape (art. 131 of the Criminal Code), the general punishment for committing this kind of crime is deprivation of freedom from 3 up to 6 years. If the victim of rape is a minor, then the criminal will be punished with deprivation of freedom from 4 up to 10 years.

b) Implementation’s mechanisms

In Russian Federation, there exists a system of public prosecution institutions, the function of which is to control the implementation of the rights of citizens, including those persons who are being held in places of deprivation of freedom, during a police investigation, and also in boarding institutions for children and other institutions. The institutions of the public prosecution regularly control the legality of procedures and measures used in children’s institutions and boarding institutions, and following this control, a certain number of measures are being undertaken in order to reinstall the rights of the child that were breached. With respect to children’s rights, the person who is competent to control the above mentioned institutions is the Representative for the rights of the child in the Russian Federation. In other subjects of the Russian Federation, where a position of the Representative for the rights of the child is installed, competent officials should make an independent survey on the implementation of the rights of the child and in particular on the implementation of the prohibition of the use of torture, violence or other cruel or degrading treatment or punishment, particularly regarding children placed in boarding and penitentiary institutions.

Concerning torture more particularly, at present, no centralized control mechanism of torture exists in the Russian Federation. This can be explained partially by the existing differences in the legislation of the subjects of the Russian Federation and by the fact that the Russian legislation itself does not provide for such a mechanism.

\(^{80}\) Revised articles 117, 286 and 302 of the Criminal Code can be found in the annex of the present report.

Another subject of concern is a lack of procedural implementation on the local level of the federal legislation on the rights of the child. More precisely there is a lack of motivation in the implementation of the federal legislation by the local officials, i.e. an excessive formalism and non application of preventive measures aiming at reducing homeless and breaching of law among children, which are however two important grounds for child abuse and severe acts of violence such as torture against children. This is particularly true in the case of the work of judicial organs in the children’s divisions. The quality of investigations of crimes related to children’s rights is also low, according to prosecutors.82 Efforts should therefore be done regarding impunity.

c) Procedures of complaint in case of torture perpetrated towards a child

There is currently an absence of two mechanisms that exist in all the western countries which have ratified the Convention on the Rights of the Child83 and that still need some time to be implemented in the Russian Federation: the mechanism for filling a complaint against a violation of the rights of the child by a State official and the existence of a special institution allowing a child to file a suit against a parent/police official who has infringed his/her rights.

The mechanism for filing a complaint regarding a violation of children’s rights by State officials does exist but is not efficient. The main shortcoming in the Russian judicial system is the impunity of state officials because of a said “inability”, on the behalf of the public prosecution, to judge Interior Ministry employees in the judicial organs because of an existing “conflict of interests”. However administrative sanctions also exist but are neither applied. This inability to judge its own colleagues standing behind the violation of human rights and in particular of the rights of the child, does not allow to have an efficient mechanism of control of the implementation of child’s rights. Therefore, this point still needs some efforts on behalf of the government of the Russian Federation.

Another problem related to the mechanism for filing a complaint for a violation of the rights of the child is the non-existence in the Russian Federation of an institution that would allow a child to file a suit against his parents or police official(s) for violating her own rights without the parent/legal representative acting as an intermediary. There are two possible reasons for this: first of all, the Russian society is not ready yet to recognize the child as a rights holder, and to accept that a child has the right to defend him/herself; second, a certain number of improvements and effective implementation still lack into the existing Russian judicial system. A control mechanism should also be set up in order to ensure that the judicial system is functioning properly.84

5.2. Torture overview in the Russian Federation

In Russia, at present, the use of torture by officials has become a massive and persistent phenomenon. Torture is used by police for the purpose of obtaining testimony from detainees, witnesses, and their families. It is also used in the Army by officers or with their knowledge or consent and, in psychiatric hospitals.85 Concerning children particularly, in addition to periods of deprivation of liberty (including police custody) torture is also used in boarding institutions for children and cases of violence and cruel

82 "The general public prosecution has discovered breaches in the implementation of the rights of the child almost in half of the regions of Russia", p.4, at http://detirossi.ru/News-Libr-st.doc.
83 Article 12.2 of the CRC implicitly requires those kinds of protection: “for this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law”.
84 This has also been recommended by B. Altschuler in his “Systematic factors which play a role in organizing and providing assistance to children in extreme situations”. Please refer to http://detirossi.ru/Libr, pp. 7-8.
behaviour of teachers towards children have been registered notably in the following regions: the Republic of Buryatia, Comy; Tyva; the town of Saint-Petersburg.

Some words should be said about the geographical spread of torture in the Russian Federation. The General Prosecutor Office of the Russian Federation has conducted a survey in 2004 of the implementation of the legislation on the rights of the child in the 32 subjects of the Russian Federation. The results were reported by the General Prosecutor of the Russian Federation, V. Ustinov, to the President of Russia.

According to this survey, in almost half of the regions comprising Russian Federation the legislation on the rights of the child is either not implemented at all or implemented in a way which is inconsistent with the dispositions of the Convention on the rights of the child. In several regions, there have been noted cases where the local judicial acts, adopted by local authorities, do not correspond to the federal legislation on the rights of the child.

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86 "The general public prosecution has discovered breaches in the implementation of the rights of the child almost in half of the regions of Russia", p.2 at http://detrussi.ru/News-Libr-st-doc.

87 "The general public prosecution has discovered breaches in the implementation of the rights of the child almost in half of the regions of Russia", p.1 at http://detrussi.ru/News-Libr-st-doc.
6. THE ADMINISTRATION OF JUVENILE JUSTICE IN THE RUSSIAN FEDERATION

The reduction of State budget has led to the decay of the child protection and social welfare systems, leaving those most negatively affected by socio-economic hardship without adequate support. Only when children come in conflict with the law, either by committing offences or by simply disturbing public order, that do they fully attract public attention. OMCT would like to remind Russian authorities that the great majority of children in conflict with the law are those who mostly need support, and they are often victims of violence themselves, and they can become key players in the country’s socio-economic stability if they are adequately supported. OMCT is also convinced that prevention is a key aspect to struggle juvenile delinquency.

6.1. Legal framework

The Third Periodic Report on the implementation of the rights of the child in the Russian Federation states that a number of actions have been undertaken by the Russian government in order to install the protection of the rights of children in the judicial framework.\(^88\)

In particular, the following legislative acts have been adopted:

1) The federal law of 1998 on the main guarantees of the rights of the child in the Russian Federation installs the guarantee of the rights of the child in all aspects of social life, including in the Russian judicial system.

2) The federal law about the modifications to be implemented into the Criminal Code of the Russian Federation, the Criminal Procedural Code of the Russian Federation, the Criminal Executive Code of the Russian Federation and other legislative acts of the Russian Federation dated of 2001. This law has changed the Criminal Code in several ways:

   i) it established a single regime for children, instead of having a so-called regime of colony;\(^89\)
   ii) it changed art. 108.4 in the sense that it compelled the administration of the rehabilitative institutions to create efforts in order to allow the detainees to acquire basic compulsory education and highest professional education.

3) The Criminal Procedural Code of the Russian Federation came into force in July 2002. It contains a revised, more human approach towards the trial procedure of a child offender, with a focus on the respect of child's rights and its guarantees.

4) The federal law concerning the activity of a lawyer and law firms in the Russian Federation of 2002. This law provides for a lawyer's assistance to children and the costs in this case are carried by

\(^{88}\) Para. 292 and 293 of the report.

\(^{89}\) The colony type institutions for adult offenders in Russia or PKTs, as they are called in Russian, exist under several forms:\(^90\):

1) a minimum security ("general regime") type colony for male non-violent first-time offenders and for all female offenders except those found to be "especially dangerous re-offenders" by the court;
2) a medium security ("strengthened regime") colony for males convicted for the first time for serious crimes;
3) a medium to maximum security ("strict regime") colony for male and female "especially dangerous repeat offenders";
4) a maximum security ("special regime") colony for "especially dangerous male repeat offenders";
5) open-prison settlements that are institutions of the half-closed type for those convicted for the first time for non-premeditated crimes and for prisoners, who have been transferred from minimum, medium and medium to maximum security-colonies by the decision of the court. PKTs of various security levels differ according to detention conditions and restrictions. In general, the administration of PKTs and pre-trial detention centers decide whether to send a convict to a specialized PKT or a prison hospital.
the government. It also allows children from closed educational institutions to have a right to free services of a lawyer.

5) The federal law concerning the foundations of the system of prevention of homelessness and breaching of law by children of 1999. This law establishes the creation of rehabilitative programmes and procedures for children sentenced to non-jail terms and for children, whose cases are stopped for non-rehabilitative reasons.

Since there is no genuine juvenile justice system in the Russian Federation, in absence of provisions particular to children, general provisions apply for children that is to say even children aged between 14 and 18 who could be considered as criminally responsible.

It should be noticed that several steps are currently being undertaken by the Russian government in order to establish a system of juvenile justice. An important step was made on 15 February 2002 when State Duma with absolute majority of its votes passed in the First Reading the addition to the Federal Constitutional Law “On the system of courts in Russian Federation”, the goal of which was to introduce into this basic Law the very notion of Juvenile Court. This was the first one of three laws from the package of laws on juvenile justice which Head of Russian delegation spoke about at the CRC “Russian” Session on 23.09.1999. However, all the process of adoption of laws on juvenile justice was stopped and until now the laws are not considered in State Duma, regardless of plenty of efforts which triggered officially expressed support by Supreme Court, by the Government, and other organs.

Meanwhile, there is certain progress in establishing juvenile justice in some Russian regions, in Rostov Region especially where a first Russia Juvenile Court was opened in the town of Taganrog. But, on the whole, OMCT remains quite pessimistic regarding essential progress in regions in the absence of adoption of federal laws on juvenile justice.

a) Minimum age of criminal responsibility

As explained in chapter II of this report, in conformity with the 1996 Criminal Code, there is a setting of the lower age limit for criminal responsibility in an alternative way. This means that individuals who have reached 16 years of age at the time of perpetration of an offence, have general criminal responsibility for all types of offence (art. 20 § 1 of the Criminal Code). For some types of offences (in general serious offences), criminal responsibility commences at the age of 14. As for OMCT, as an exception to the first paragraph, the second paragraph of article 20 CC constitutes a clear violation of article 40 para.3 a) of the CRC which states that state parties shall set up “a minimum age below which children shall be presumed not to have the capacity to infringe the penal law”.

92 Article 20 para. 2 of the Criminal Code states that “Persons who have attained fourteen years of age at the time of commission of a crime shall be subject to criminal responsibility for homicide (art. 105), intentional causing of grave harm to health (art. 111), intentional causing of average gravity of harm to health (art. 112), stealing of a person (art. 126), rape (art. 131), forcible actions of sexual character (art. 132), theft (art. 158), open stealing (art. 161), assault with intent to rob (art. 162), extortion (art. 163), unlawful taking possession of automobile or other means of transport without purpose of stealing (art. 166), intentional destruction or damaging of property under aggravating circumstances (art 167 para. 2), terrorism (art. 205), taking of hostage (art. 206), knowingly false communication concerning act of terrorism (art. 207), hooliganism under aggravating circumstances (art. 213 para. 2 and 3), vandalism (art. 214), stealing or extortion of weapon, ammunition, explosive substances or explosive devices (art. 226), stealing or extortion of narcotic means or psychotropic substances (art. 229), and bringing means of transport or railways into unfitness (art. 267).
b) Legal procedures applicable to children

• General principles:

During the period from 1998 to 2002, a certain number of modifications have taken place in Russian juvenile justice legislation. For example, articles 14 and 20 of the Criminal Code, chapter 17 of the Criminal Executive Code, chapter 11 of the Family Code have been modified regarding the rights of children. All these modifications aim at guaranteeing more judicial rights to implement the rights of the child. For instance, in the Criminal Code, it is prohibited to begin investigation concerning a crime which is not registered in the Criminal Code or the event of the crime is missing. The investigation of the case can only take place with the accord of the prosecutor. The legal representative of the child has a significant role to play in the investigation. The child can be found guilty only upon the decision of the court. The presumption of innocence remains a Constitutional principle for everybody (art. 49).

• Principles applicable to a child who has been arrested:

1) the time period during which a protocol of arrest should be formed is 3 hours after the arrest;
2) the prosecutor should become informed of the arrest of the child in a period of 12 hours (art. 92);
3) the child should be informed in max. 24 hours about the reason of his arrest and be questioned;
4) the prosecutor should inform the family of the arrested child in a period of 12 hours after the arrest (art. 46.2, 96);
5) from the moment the child is arrested, the latter has a right to a lawyer and be questioned in his presence (art. 425). If the lawyer is hired upon the order of the investigator, then his services to the child will be paid from the government's budget (art. 50).

Prohibition of torture as well as the punishment of abuse of official power and of compelling to give evidence are other rules protecting all citizens including children against possible abuses by police officers (see chapter 5.1 above for further details).

• Principles before the court/judge(s):

The court, has a maximum of 14 days to examine the case and take the decision concerning the guiltiness and the possible measures (art. 233.1 Criminal Procedural Code). The time frame for a court to take a decision to have a first hearing of the case is: a) 14 days if the offender is kept under guardian surveillance; b) 30 days if he/she is not under surveillance. At the end of the investigation, the child and his representative have the right to get informed with all the documents that comprise the particular case (art. 217 Criminal Procedural Code).

The following important modification has been brought to the Criminal Procedural Code: upon the acceptance by the child of the crime that he is declared guilty with at the beginning of investigation, the child can demand to be sentenced without having a complex court trial. This demand should be signalled either at the moment the child becomes informed with the documents, or at the moment of the first hearing in the presence of a legal assistant, lawyer. In this case of “shortened” trial, the child offender is not questioned and the testimonies are not questioned either; there is no research of the proofs for the crime. In this case, the penalty should not exceed 2/3 of the maximum time limit or the volume of the highest punishment for the particular type of crime, for which the child is responsible (chapter 40). This legislation could lead to abuses because of the unawareness of the proceeding of the child offenders who lack legal assistant, which is often the case (see further in chapter 5.2. a) Inadequate implementation of the proceedings).

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A psychologist can take part in the child's trial and by questions to the child to allow the court to take an equitable final decision (art. 425 Criminal Procedural Code).

In conformity with the Criminal Procedural Code of the Russian Federation, the rights, freedoms and interests of the children from 14 until 18 years of age should be defended by the legal representatives of these children. However, if the minor wishes, the court should let the child in question participate in defending her own rights, in conformity with art. 37 § 3. In some situations provided by the federal law concerning cases of civil, family, labour, or other nature, the child from 14 until 18 years of age is in a position to defend his rights and freedoms. Until the child is 14 years of age, his rights should obligatory be represented by his/her legal representatives – parents, guards, trusteeship persons.

c) Sanctions applicable to a child offender

The sanctions applicable to children who have committed a crime are covered by section V "Criminal Responsibility of Minors" of the Criminal Code of the Russian Federation, articles 87-96.

According to art. 87 § 2 of the Criminal Code of the Russian Federation, "to minors who have committed a crime may be applied compulsory measures of educational influence or punishment may be assigned to them".

Articles 90 and the followings deal with compulsory measures of educational influence. Article 90 covers the situation where "a minor who has committed a crime of minor or average gravity may be relieved from criminal responsibility if it is deemed that his reform may be achieved by means of the application of compulsory measures of educational influence". It also lists the types of compulsory measures of educational influence that may be assigned to a minor.

Article 91 describes the content of compulsory measures of educational influence which can be assigned to a minor. Article 92 lists the conditions under which a minor can be relieved from punishment by substituting the initial assigned punishment with the application of compulsory measures of educational influence provided for by art. 90 of the Criminal Code.

Article 88 § 1 establishes the types of punishments which could be assigned to minors, that is, "persons who at the time of the commission of a crime were fourteen years of age but not eighteen years of age" (art. 87 § 1) :

1) fine (a fine is assigned for a conviction ranging between 2 weeks and 6 months);
2) deprivation of right to engage in determined activity;
3) obligatory tasks (they range from 40 until 160 hours; if this type of punishment is assigned to persons under 15 years of age, then the number of daily hours for this category of persons should not exceed 2 hours, and for persons between 15 and 16 years of age, then the number of hours should not exceed 3 hours daily);
4) correctional tasks (they are assigned for a conviction under one year);
5) arrest (as a measure decided by a court; in this case the arrest is assigned to "a minor convicted person who has attained at the moment of the rendering of judgment by the court sixteen years of age, for a term of from one up to four months"(art. 88 § 5));
6) deprivation of freedom for determined period (this shall be assigned to a minor convicted person who has committed a crime for a term not exceeding ten years and who is placed in a socio-educational institution).

96 The Criminal Code of the Russian Federation, art. 37 § 5.
97 Article 90 para. 1 of the Criminal Code has been modified by the Federal Law of 8 December 2003.
The Federal Law of 8 December 2003 amended article 88 CC which now provides that, in case of deprivation of liberty, the lowest limit of punishment for the commission of a grave or especially grave crime shall be reduced by one-half.

A court may give an instruction to the agency executing the punishment concerning records of the minor convicted person when determined peculiarities of his personality are to be treated. Article 89 of the Criminal Code affirms in its paragraph 1 that the assignment of punishment to a minor should take into account the conditions of his life and nurturing, level of mental development, other peculiarities of the personality, and also the influence of older persons on him. Paragraph 2 of the same article states that minority age as a mitigating circumstance shall be taken into account in aggregate with other mitigating and aggravating circumstances.

Article 93 lists the conditions which provide for a conditional-early relief from serving punishment, applicable to persons who committed a crime at the age of a minor and was sentenced to deprivation of freedom after actually serving. Article 94 states that the periods of limitation established by art. 78 and 83 shall, when relieving minors from criminal responsibility or from serving punishment, be reduced by half. Article 95 describes the periods for cancellation of Record of Conviction applicable to persons who have committed a crime before attaining eighteen years of age.

Another category of measures considered as socio-educational measures may be inflicted on child criminal. They are as follows:

1) a time period of probing, applied to children who committed crimes of light and average harm to health (art. 73, 90 of the Criminal Procedural Code);
2) consultative services are provided to children and their families (Federal law “About the task of lawyers in the Russian Federation”, art. 25, 26);
3) the establishment of the patronage system specialized in providing education and social bringing up to the child;
4) individual programmes providing educational services to children are also installed (“Instructions for the organization of work of the departments specialized in cases of minors of inner state departments”, art. 39).

The Criminal Procedural Code (article 17) determines the rules and conditions of application of punishment regime, without deprivation of freedom. The Code has undergone modifications in 2001 in order to “humanize” the conditions of the sentenced persons serving this kind of punishment.

d) The penitentiary system

The penitentiary system of the Russian Federation gather both the pre-trial institutions and the institutions for sentenced children.

The following premises welcome children who are waiting for their trial:

a) military detention centres;

b) police lockups; administrative “Arrest” centre; special intake institution; IVS-centres of isolation for temporary detention and finally;

c) SIZOs – a centre that regroups three categories of detainees: those who wait for trial; those who are in an investigation detention centre and those who are in an investigation isolator.

Sentenced children are detained in IU (correctional institutions where those who received prison sentences serve their terms; IUs include IUs of various types including VKs, and prisons), VK (educational colonies for minors), IK (correctional colonies for adult offenders), IU hospitals (for convicts who require serious treatment or examination), SPBs, disciplinary battalions (special psychiatric hospitals for convicts declared insane and those who are seriously mentally disturbed as

well as for those who became mentally ill while serving their sentence terms. Violent offenders and recidivists are usually allocated to SPBs by the court. Non-violent first offenders can be sent to a general psychiatric hospital. In 1998 SPBs were transferred from the jurisdiction of the MVD under the Ministry of Health. Disciplinary battalions are special military detachments for servicemen who committed military crimes. This is a closed type institution), SSS (special half-open secondary schools for teenagers between 11 and 14 years of age), or SVS (special half-open vocational schools for juveniles between 14 and 18 years of age). 99

Prisons are penitentiary institutions for people convicted of serious crimes or who are sent to prison by the court from IKs for persistent violations of the colony's internal regulations. Convicts serving time in different security levels (minimum, medium, medium to maximum) are kept in separate blocks of the prison. There used to be special prisons for those who received prison sentence for serious offences and for persistent violators of internal IU regulations. There is a special block for disciplinary punishment in every prison.

6.2. Practice: deficiencies of the system

a) Inadequate implementation of the proceedings

According to official Russian sources 100, practice shows that in 75 % of cases the court sentences a child to a formal sentencing, without sentencing him to a deprivation of freedom. The organ specialized in applying an educational work to the child should strive to make the child develop a deeper sense of respect towards himself and others. But on the other side deprivation of liberty awaiting trial is very often applied.

Moreover, arrest, as a measure of prosecution, is applied unreasonably often. As a rule, arrestees are not released after their case went to court. 101

Practice also shows that judges often get familiar with cases without the presence of parents or guardians of children, which is a clear violation of law. Most young offenders cannot afford to hire a skilled defence lawyer. They do not know their rights, do not understand the meaning of legal procedures, and do not know how to write a complaint or any other document relating their cases. 102

b) Conditions of detention of children

• Conditions in pre-trial institutions

According to the report issued by Amnesty International "Russian Federation: Summary of concerns on the human rights of women and girls" of January 2002 103, in 2001 the Russian Human Rights Commissioner described the conditions in Russian prisons "horrible" and said that the pre-trial detention centres had become "hotbeds of epidemics", while some judges "continue to be guided by the categories of the past", which only exacerbates the conditions of detention in Russia's prisons 104.

Moreover, according to Moscow Centre for Prison Reform, a local NGO, 105 the conditions in the penitentiary institutions of all types in Russia are worrisome. In general, in these institutions medical service is inadequate. There were reported cases of a considerable number of juveniles who had scabies and who didn't receive any treatment for 23 weeks in spite of the fact that they asked to see a

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99 For more detailed information, please refer to http://www.prison.org/english/
103 Please refer to http://web.amnesty.org/library/Index/.
104 Please refer to http://web.amnesty.org/library/Index/.
doctor. Women prisoners, as well as girls were not supplied with necessary sanitary material and toilet articles\textsuperscript{106}.

The number of staff working with minors is inadequate. In fact, it's the existing lack of control over the detained minors that allows violence and suicide attempts to take place. Practice shows that girls file almost no complaints about conditions of detention or violations of their rights to state oversight bodies or to non-governmental organizations because this is punished by other inmates, according to informal rules among prisoners.

For instance, the following case of violence was reported in girls’ cell: in the Butyrka pre-trial detention centre one girl, Marina R., was almost raped with a hot water boiler. It was by mere chance that the girl was spared – a prison official happened to be near the door and overheard a conversation. This official opened the door and let the girl who was supposed to be a victim out. The incident was under departmental investigation which brought no results. The reason for this was the fact that the investigation started several months later.

It appears as almost impossible to avoid violence and torment in juvenile cells, because according to the informal code of conduct inherent to these groups of prisoners, asking the prison administration for help is a disgraceful act; complainers are tormented in other cells, during transportation to a colony, and in the colony.

These inhuman conditions are accompanied by psychological ill-treatment: juvenile prisoners are not allowed to work, continue education, or receive books and newspapers from their relatives; books from prison library are not often available, on week days inmates receive only one newspaper per cell.\textsuperscript{107}

- Conditions for sentenced child prisoners

There is no separate juvenile justice system in Russia, and the situation of juvenile detainees remains particularly bad\textsuperscript{108}. In June 2001 officials from the Main Directorate for Execution of Punishment (GUIN) at the Ministry of Justice stated that over 17,000 sentenced juveniles were currently imprisoned in 64 special colonies for adolescents. According to official information, 10 colonies had recently opened in former army and Interior Troops barracks which had been transferred to the Ministry of Justice’s jurisdiction. Officials also stated that 55\% of juveniles in the prison system had been convicted of theft and 10\% of robbery, which under Russian law is punishable by five to six years’ imprisonment. According to figures from Amnesty International, there are of up to 3 000 cases in which petitions for clemency had been returned by the President of the Russian Federation without consideration – the majority of these cases referred to minor crimes and first-time offenders, including children.

Considering girl detainees in particular, there are only three prison colonies for girls in the whole Russian Federation, which makes it very difficult for the sentenced girls to maintain links with their families or to receive material support from them.

The situation of another category of children that are children of women prisoners is also worrying since mothers with children under the age of three are held in separate facilities, some with very limited visitation rights. According to Amnesty report, the population of these detention facilities exceeds their capacity by 150\%. In the facilities situated in the cities of Moscow and St. Petersburg the reported population to capacity is about 300\%.\textsuperscript{109}

\textsuperscript{109} Please refer to http://web.amnesty.org/library/index.
Case of children's ill-treatment and torture in prison

In 2002, OMCT denounced the serious ill-treatment of Andrei Victorovitch Osenchugov and Alexei Vladimirovitch Shishkin while detained in Nizhny Novgorod regional pre-trial detention centre.

The adolescents were arrested on March 5th, 2002, together with two other minors, on suspicion of robbery, and were transferred two days later, on the order of the prosecutor of the Somovski District of the City of Nizhny Novgorod, to the Nizhny Novgorod regional pre-trial detention centre IZ –52/1, in Novgorod.

In the pre-trial detention center, Osenchugov was put in a cell together with other minors and an adult person, Mr. Mikhail Petrov Germanovitch. On the 27th and 28th July of 2002, allegedly following an order given by a prison guard, Petrov, joined by another adult named Sergei, severely ill-treated and tortured Osenchugov in order to force him to confess his involvement in several other robberies, which he finally did as a result of the treatment. On 30 July, Shishkin was moved into the cell where Sergei and Petrov were detained and was beaten until he confirmed Osenchugov's statements.

On August 5th, 2002, the parents of Osenchugov and an aunt of Shishkin filed a complaint to the prosecutor of Sormovski district and to Mr. Topanov, chief officer of the pre-trial detention centre, alleging the ill-treatment of the two adolescents and calling for an investigation. On August 12th, 2002, the families received a letter, signed by Mr Topanov, which informed them that the officers of the pre-trial detention centre IZ-52/1 checked the claim and found no reason to initiate an investigation.

A criminal procedure had been opened by the Prosecutor's office regarding the serious ill-treatment of Osenchugov and Shishkin and an official investigation had been launched. Finally, the two 17 years-old adolescents and the two others were found guilty of robbery and sentenced to 8 years of imprisonment by the judge of the Sormovski district court of Nizhny Novgorod, Mr. Grigoriev, on October 21st, 2002. The official investigation, launched at the beginning of October by the prosecutor's office, has confirmed the fact that Andrei continued to be subjected to ill-treatment between August and October 2002. Andrei was also forced to give false statements denying his ill-treatment.

According to the information received, on November 13th, 2002, investigator Elena Valer’evne Zhebko, came to visit Andrei at the detention centre. Andrei requested her presence and assistance to write a statement explaining that he had himself asked Petrov and Sergei to torture him and that his previous declarations were all made up. Later Andrei declared that he had given this new statement of his own will and without his parents' consent. During a short conversation alone with his father, Andrei confessed that he decided to change his statement following threats of further violence. On November 21st, 2002, Andrei's parents received a letter from their son, in which he strongly asked his father to address a petition calling for the end of further investigation to the Soviet District Department of Interior.

The case of the two teenagers was reopened by the Nizhny Novgorod Region Prosecution Office on August 19th, 2003. The authorities investigating the case have clearly shown their desire to abandon further investigation of the case, and have even put pressure on Andrei Osenchugov’s father to write a request to halt the investigation on behalf of his son.

On September 19th, 2003 Andrei Osenchugov’s father submitted a written statement to the NNCAT. In the statement he informed them that he had visited Andrei in the Arzamas juvenile correction facility, where Andrei had told him that on September 16th, 2003 he and Alexei Shishkin had been visited by Major Martynov. Major Martynov requested that Andrei Osenchugov and Alexei Shishkin write a request to halt the criminal procedure concerning this case. Andrei and Alexei both refused to do this, after which Major Martynov threatened them with being transferred back to the Nizhny
Novgorod Pre-Trial Detention Centre IZ –52/1, where they would be forced to sign a request to stop the procedure.\textsuperscript{110}

\textsuperscript{110} See OMCT website at http://www.omct.org/base.cfm?page-article&num=3604&consol-close&kwrd=OMCT&rows=2&cfd=1729546&ctoken=49997832; the case was also mentioned in the Report of the Special Rapporteur Theo van Boven on Torture and other cruel, inhuman or degrading treatment or punishment, Addendum, Summary of information, including individual cases, transmitted to governments and replies received, E/CN.4/2004/56/Add.1, 23 March 2004.
RECOMMENDATIONS

The World Organisation Against Torture (OMCT) would recommend the UN Committee on the Rights of the Child to ask the Russian Federation:


2. To properly implement the national and international legislation preventing discrimination whatever its purpose. In particular, the Russian Federation should protect with a careful consideration children living in state institutions, street children, HIV-infected children particularly by providing effective social welfare services for all children in need of care.

3. To protect children from the consequences of the war particularly the war in Chechnya in compliance with article 38 paragraph 1 of the Convention on the Rights of the Child.

4. To fight against child domestic violence through campaigns aiming to raise public awareness and educational programs for the attention of both parents and children and through a more active prosecution of authors of violence against children.

5. To provide an effective protection of children which will function, for example, through the establishment of a system of local monitoring teams of state officials specialised in the repression of the illegal forms of child labour.

6. To protect all children, even those between 14 and 18, from lewd actions especially from the involvement in prostitution and in pornography. In this respect, Russian authorities should above prosecute the procurer instead of young prostitutes who are generally forced. The creation of specialised police teams to fight against sexual exploitation including pornography on internet and procuring as well as trafficking of minors.

7. Concerning trafficking, to define the status of the trafficking victims as well as elaborate mechanisms allowing to assist or protect these victims.

8. To modify, amend the definition of torture laid in the Criminal Code so that it is fully in compliance with the Convention Against Torture and with a specific broader definition in case of child torture.

9. To vote a provision specifically criminalizing torture with more severe sanctions in case where the victim is a person under 18 years of age.

10. To set up independent mechanisms with independent professionals specialised in child issues (doctors, lawyers, social workers, psychologists, etc.) in order to address the issue of torture and severe violence towards children in all state premises where children live, are detained or kept, etc. The aim of such mechanisms should be the prevention from torture as well as legal actions against the perpetrators.

11. To allow and facilitate the file of complaint regarding the violation of child rights by the minor him/herself or by his/her representative(s) (parents or legal counsel) when the violation has been committed by a state agents or by the minor him/herself when s/he is victim of violence from a relative.
12. To reform the current juvenile justice system in compliance with the Convention on the Rights of the Child and other international standards such as the Beijing Rules and the Riyadh Guidelines and particularly introduce specialised juvenile courts and trained juvenile judges.

13. To provide effective legal assistance to the arrested minor from the first hours of his/her arrest. Adequate trained lawyers or paralegals should be available in all regions, including the smaller localities, to assist and defend the rights of the child involved in the judicial system.

14. To comply with article 40 paragraph 3 a) of the Convention on the Rights of the Child and article 4 of the UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules).

15. To ensure that a person who has committed an offence being under 18 years old will not be deprived of his/her freedom for more than ten years and will not be detained in an adults' prison.

To ensure that no child is detained in a special block for disciplinary punishment and, in any case, to

16. ensure that no child submits corporal punishment from the guards or other inmates.

17. To use deprivation of liberty only as a measure of last resort and particularly reduce the use of pre-trial detention of children to exceptional cases as well as the use of arrest as a measure of prosecution.

18. To ensure that judges properly apply the proceedings specific to minors in conflict with the law such as the presence of the parents or guardians of the child when dealing with his/her case.
ANNEXE

Article 117 CC: Torture
1. The causing of physical or mental sufferings by means of the systematic infliction of beatings or other forcible actions, if this did not entail the consequences specified in articles 111 [severe damage to health] and 112 [damage to health of average seriousness] of the present Code shall be punished by deprivation of freedom for a term of up to three years.
2. The same act committed: [...] with the application of torture [...] shall be punished by deprivation of freedom for a term of from three up to seven years.
By torture in the present Article and other Articles of the present Code is understood the causing of physical or moral sufferings for the purpose of coercion to give testimony or other actions contrary to the will of the person, and also for the purposes of punishment or other purposes [added by Federal Law of 8 December 2003].

Article 286 CC: Exceeding official powers
1. The performance by an official of actions clearly exceeding the limits of his powers and which entailed a material violation of the rights and legal interests of citizens or organizations or the interests of society or the State protected by a law -
shall be punished by a fine in an amount of up to eighty thousand rubles or in the amount of earnings or other revenue of the convicted person for a period of up to six months, or by deprivation of the right to occupy determined posts or to engage in a determined activity for a term of up to five years, or by arrest for a term of from four up to six months, or by deprivation of freedom for a term of up to four years [as amended by Federal Law of 8 December 2003].
2. The same act committed by a person occupying a State post of the Russian Federation or State post of a subject of the Russian Federation, and likewise the chief of an agency of local-self government -
shall be punished by a fine in an amount of from one hundred thousand up to three hundred thousand rubles or in the amount of earnings or other revenue of the convicted person for a period of from one year up to two years, or by deprivation of freedom for a term of up to seven years with or without deprivation of the right to occupy determined posts or to engage in a determined activity for a term of up to three years [as amended by Federal Law of 8 December 2003].
3. The acts provided for by paragraphs one or two of the present Article, if they are committed:
   (a) with the application of force or with the threat of the application thereof;
   (b) with the application of a weapon or special means;
   (c) with the causing of grave consequences -
shall be punished by deprivation of freedom for a term of from three up to ten years with deprivation of the right to occupy determined posts or to engage in a determined activity for a term of up to three years.

Article 302 CC: Compelling to give testimony
1. The compelling of a suspect, accused, victim or witness to give testimony or of an expert or specialist to give an opinion or to testify by means of the application of threats, blackmail, or other illegal actions on the part of an investigator or person performing an inquiry, and likewise another person with the knowledge or tacit consent of the investigator or person performing an inquiry by means of the application of threats, blackmail, or other illegal actions on the part of the investigator or person performing an inquiry [as amended by Federal Law of 8 December 2003] -
shall be punished by deprivation of freedom for a term of up to three years.
2. The same act committed with the application of force, mockery, or torture -
shall be punished by deprivation of freedom for a term of from two up to eight years. 111