



Committee on the Elimination of Discrimination against Women

Human Rights Treaties Division (HRTD)

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Information on Russia for consideration by the Committee on the Elimination of Discrimination against Women at the 80th Session (18 Oct 2021 - 12 Nov 2021)

Introduction:

1. We respectfully submit this report for consideration during the Russian Federation's ninth periodic review by the Committee on the Elimination of Discrimination against Women ('the Committee') during its 80th Session (18 Oct 2021 - 12 Nov 2021). Equality Now and "Sisters Centre" request that this letter be used to supplement Russia's ninth periodic State Party report to the Committee.
2. The legal provisions and practices detailed in our report highlight the failure of the State to comply with its duty to provide equal protection under the law to survivors of sexual violence (Article 2(c) of CEDAW); failure of law enforcement to protect women from sexual violence (Article 2(c) and (e)); and that the decisions and failings of the authorities and their agents constitute demonstrable direct and indirect discrimination against women (Article 2(d)); as well as failing to recognise and identify the gender dimension of sexual violence during the prosecution of the accused and in the punishment of this crime (Article 2(e)). In violation of the Convention, the Russian Federation has also failed to enact criminal law provisions to effectively prosecute sexual violence and gross manifestations of violence against women (Article 2(b)). We submit that the root causes of the failures of the State are its non-compliance with the obligation to transform gender hierarchies and stereotypical attitudes towards women, contrary to Articles 2(f) and 5(a) of the Convention and the obligation to combat violence against women and provide access to justice to survivors, as described in General Recommendations 19, 33 and 35 of the CEDAW Committee.

Information about the authors of the report

3. **Equality Now** is an international human rights NGO with ECOSOC status with the mission to achieve legal and systemic change that addresses violence and discrimination against all women and girls around the world. Founded in 1992, Equality Now is a global organisation with partners and supporters in every region. Ending sexual violence, ending sex trafficking, ending harmful practices and achieving legal equality are the main areas of Equality Now’s work. This report is in reference to Equality Now’s 2019 report, “Roadblocks to Justice: How the Law is Failing Survivors of Sexual Violence in Eurasia” which identified gaps in the law in the Russian Federation, thereby allowing for actual and potential impunity for perpetrators of sexual violence crimes. This report also relies on the Third Party Intervention to the European Court of Human Rights, in the case of T.V. v. Russia, submitted by the European Human Rights Advocacy Centre, Equal Rights Trust and Equality Now on 29 January 2020. This report is also in reference to Equality Now’s 2020 report, “Female Genital Mutilation/Cutting: A Call for a Global Response”, which identifies Russia as one of the 41 countries globally where there is evidence of female genital mutilation (FGM) taking place but which has no specific law against the practice.
4. **“Sisters” Centre** (full name Independent Charity Centre for Assistance to Sexual Violence survivors “Sisters”) is a Russian regional organisation established in Moscow in 1994 with the goal of providing support and assistance to survivors of sexual violence, especially women and children. The goals of the organisation’s activities include providing direct assistance to survivors of sexual violence (the “Sisters” Centre has a helpline and crisis email, provides individual psychological counseling), assisting survivors of sexual violence in receiving any other assistance they need, and promoting the establishment of favourable legal, psychological and social conditions for the rehabilitation of survivors of sexual violence. “Sisters” Centre works directly with the negative consequences of violence, and monitors how inadequate legislation and the insufficiency of measures taken by the state affect the psychological and physical condition and well-being of survivors of sexual violence, who find it difficult to obtain the necessary help and rehabilitation. The Centre provides assistance to people from all over Russia.
5. We reiterate and support the Concluding Observations¹ on the seventh periodic report of the Russian Federation and underscore, in particular, the recommendations urging the government:
 - a. To adopt comprehensive legislation to prevent and address violence against women, including domestic violence, introduce ex officio prosecution of domestic and sexual violence and ensure that women and girls who are victims of violence have access to immediate means of redress and protection and that perpetrators are prosecuted and adequately punished;²
 - b. To collect statistical data on domestic and sexual violence disaggregated by sex, age, nationality and relationship between the victim and the perpetrator;³
 - c. To conduct research on the extent of harmful practices in the northern

¹ CEDAW Committee, Concluding observations on the eighth periodic report of the Russian Federation, [CEDAW/C/RUS/CO/8](https://www.cedaw.org/ru/CO8)

² *Id.*, para 22(a)

³ *Id.*, para 22(d)

Caucasus and develop a comprehensive strategy to eliminate them, including through education and awareness-raising campaigns for community and religious leaders and the general public to ensure the effective prosecution and conviction of perpetrators as well as the provision of remedies and support services for victims, in particular shelters;⁴

- d. To strengthen the capacity of law enforcement authorities to protect women and girls from violence, adopt standardised procedures for the police in all regions of the State party on gender-sensitive investigations and the treatment of victims, and encourage women to file complaints without having to fear retribution or stigma;⁵
 - e. To ensure that women who are victims of abduction for forced marriage, crimes in the name of so-called honour, female genital mutilation and polygamy can report cases without having to fear retribution or stigma and can have access to legal, social, medical and psychological support.⁶
6. With this report, we urge the Committee to reiterate the Russian Federation's obligations under CEDAW, in particular with respect to ensuring access to justice for survivors of sexual violence and harmful practices and bringing perpetrators to justice.

Legal Provisions enabling impunity for perpetrators of sexual violence

Definitions of sexual violence crimes

7. The requirement to introduce a consent-based definition of rape and other forms of sexual violence which ensures that all coerced and non-consensual acts of a sexual character are criminalised is a well-established principle under international human rights and criminal law, including by this Committee.⁷
8. We submit that Articles 131, 132 and 133 of the Criminal Code of Russia need to be amended to ensure that the definitions of rape and other sexual violence crimes are in compliance with standards developed by international law and cover all forms of sexual violence acts committed without the victim's voluntary, genuine and willing consent. We also submit that sanctions for the above crimes should correspond to the gravity of the crimes.
9. Articles 131-135 of the Criminal Code of Russia criminalise various forms of sexual

⁴ *Id.*, para 24(a)

⁵ *Id.*, para 24(b)

⁶ *Id.*, para 24(d)

⁷ CEDAW Committee, *General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19*, UN Doc. CEDAW/C/GC/35 ("CEDAW Committee General Recommendation No. 35"); CEDAW Committee, *Vertido v Philippines*, Merits, Communication No. 18/2008, UN Doc CEDAW/C/46/D/18/2008 (2010); *R.P.B. v Philippines*, Communication No. 34/2011, UN Doc. CEDAW/C/57/D/34/2011 (2014).

violence, including rape,⁸ violent actions of a sexual character,⁹ compulsion to perform sexual actions,¹⁰ and statutory rape.¹¹ These provisions fail to apply the international and regional human rights standard of requiring lack of consent as a proper element of crimes of sexual violence and denoting that any consent must be given voluntarily as the result of the person's free will. The crime of rape currently defined requires additional violence, or threat thereof, rather than identifying additional violence as an aggravating circumstance of rape.

10. In cases where rape is reported but there is no additional serious physical harm, law enforcement often fails to conduct an investigation or bring charges, or the cases are dismissed by the court because of the lack of evidence on additional physical violence and of biological material (sperm, sweat, saliva) indicative of a sexual act. It is a common practice that nobody, including law enforcement and the courts, will believe that a rape was committed when there is no evidence of resistance, additional injuries or witnesses.
11. The "helpless state of the victim" is included in the law as an alternative element to the requirement for additional violence on the part of the perpetrator, but there is no definition or explanation in the law as to what this entails. In practice, this element has often been applied in cases where the victim has a physical disability or compromised mental faculties (for example, if she has dementia, a mental disorder, or is unconscious). The court will, in these cases, question whether the victim had the ability to understand the situation enough to be able to resist the perpetrator. In these cases, the perpetrator has the responsibility to be aware of her "helpless state". Therefore, "helpless state" has very limited application and does not cover many situations where the perpetrator could overcome the will of the victim (e.g. perpetrator subjecting victim to systematic rape within the context of domestic violence and making her helpless, or taking her to a deserted area where it is not possible to resist sexual violence).
12. As well as neglecting the importance of willing consent, the reviewed sexual violence provisions do not enumerate a wide range of coercive circumstances under which consent should be deemed immaterial, such as when the perpetrator abuses a position of trust and authority and exploits situations of dependence, including within a domestic relationship. This in practice means that the prosecution of rape is overwhelmingly limited to situations where the victim has the physical evidence of injuries and can prove physical resistance to sexual intercourse. When such evidence cannot be secured, or when sexual violence was committed without using additional physical force, there is very little chance that the perpetrator will be brought to justice.
13. Moreover, gender-based violence is not recognised in the law or in practice, including

⁸ Article 131. "Rape, that is, a sexual intercourse with the use of violence or of a threat thereof, with respect to the victim [female] or to other persons or with the use of a helpless state of the victim..."

⁹ Article 132.1. "Pederasty, lesbianism or other actions of sexual character with the use of violence or with a threat thereof with respect to a male (or female) victim or to others..."

¹⁰ Article 133.1. "Compulsion of a person to enter into sexual relation, pederasty, lesbianism, or the commission of other sexual actions by means of blackmail, threat of destruction, damage, or taking of property, or with the use of material or any other dependence of the victim."

¹¹ Article 134(1). "Sexual intercourse with a person who has not reached the age of sixteen years committed by a person who has reached the age of eighteen years..."

by law enforcement or the criminal justice system. This results in a range of offences not being criminalised nor recognised as structural discrimination and violence against women and girls, such as sexual harassment, sextortion, image-based sexual abuse, and non-consensual image/video sharing. As a consequence, such crimes are not perceived by society as violence against women resulting in a general acceptance and perpetuation of these forms of gender-based violence.

Child marriage

14. Article 134 of the Criminal Code of Russia expressly provides that if an adult person (over the age of 18) marries a girl below 16 with whom he has had sexual relations with her supposed consent, he will not be punished for the statutory rape. Although marriage under the age of 18 (16 in exceptional circumstances) cannot be legally registered in Russia, the autonomous regions of Russia have the authority to lower the age to as low as 14. Permitting marriage under the age of 18 is usually justified as a result of pregnancy or if the adolescents officially reach the age of legal capacity and have a permanent job that provides for them. In addition, the court can and does recognise cohabitation without registration as being a married state, as long as the parties have reached the permitted age of marriage. Not only does this exemption provision exonerate perpetrators from punishment of statutory rape, it also fails to recognise the particular vulnerability girls of such an age have to being exploited and coerced or the long-term harm they may face as a result of child marriage and rape.
15. Currently, according to regional laws, marriage under the age of 18 is permitted. The Russian government recently declared it will further submit amendments to federal legislation, namely the Family Code and the Law on Civil Status Acts, which would allow persons under the age of 18 to enter into marriage. These proposals were expected to be discussed and approved in the State Duma in February 2021, but they have not yet taken place.

Marital rape

16. CEDAW's General Recommendation 35 provides that States should ensure that a "definition of sexual crimes, including marital and acquaintance or date rape, is based on the lack of freely given consent and takes into account coercive circumstances."¹² CEDAW and the Human Rights Committee have to date recommended that the States of the former Soviet Union specifically criminalise marital rape, including Kyrgyzstan

¹² CEDAW, CEDAW/C/GC/35, General Recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19.

(2018),¹³ Tajikistan (2018),¹⁴ Belarus (2016),¹⁵ Latvia (2014)¹⁶ and Lithuania (2014).¹⁷ As countries of the former Soviet Union, they continue to share similar definitions of sexual violence crimes, as well as similar criminal justice systems. Therefore, recommendations given to these countries are relevant to all countries that retain a similar legal context, including the Russian Federation.

17. Whilst international human rights standards highlight the obligation of States to pay specific attention when it comes to crimes committed in a domestic setting, such as marital rape, this is neither explicitly criminalised in a separate provision, nor included as an aggravating factor of sexual violence crimes in the Russian Criminal Code.

Ex officio investigation/prosecution

18. International human rights standards are clear in requiring authorities to respond seriously to all cases of gender-based violence, including through prosecution led by the State, to ensure access to justice.¹⁸ Furthermore, in the case of *O.G. v. the Russian Federation*,¹⁹ the CEDAW Committee commented that “the fact that a victim of domestic violence has to resort to private prosecution, where the burden of proof is placed entirely on her, denies the victim access to justice”²⁰ and recommended that Russia “[a]dopt comprehensive legislation to prevent and address violence against women, including domestic violence, [and] introduce ex officio prosecution of domestic and sexual violence.”
19. Russia fails to ensure ex officio/public prosecution for sexual violence crimes, classifying these crimes as ones prosecuted under private-public prosecution procedures. Article 20.3 of the Criminal Procedure Code of Russia, which is applicable to rape and violent actions of a sexual character, provides that “criminal cases of private-public prosecution are initiated only upon application from the victim, or from their legal representative, but are not subject to termination due to the victim’s reconciliation with the accused.”
20. This provision implies and is interpreted as the victim having to file a specific complaint of rape for the crime to be prosecuted. This omits situations where, for instance, the victim includes facts of an alleged rape but files a complaint of domestic

¹³ CEDAW Committee, *Inquiry concerning Kyrgyzstan under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women*, 21 September 2018, CEDAW/C/OP.8/KGZ/1, § 92.b.

¹⁴ CEDAW Committee, *Concluding Observations on the sixth periodic report of Tajikistan*, 9 November 2018, CEDAW/C/TJK/CO/6, § 26.

¹⁵ CEDAW Committee, *Concluding Observations on the eighth periodic report of Belarus*, 18 November 2016, CEDAW/C/BLR/CO/8, § 23.a.

¹⁶ UN Human Rights Committee, *Concluding Observations on the third periodic report of Latvia*, 11 April 2014, CCPR/C/LVA/CO/3, § 9.a.

¹⁷ CEDAW Committee, *Concluding Observations on the fifth periodic report of Lithuania*, 24 July 2014, CEDAW/C/LTU/CO/5, § 25.e.

¹⁸ CEDAW Committee General Recommendation No. 35, § 44.

¹⁹ *O.G v Russia* *ibid* § 9

²⁰ Communication No. 91/2015 (2017) § 7.7; See also *X and Y v Russia*, No. 100/2016, (2019), CEDAW/C/73/D/100/2016

violence or of any other crime, or where a medical professional reports evidence of rape of their patient to the police but the patient does not proactively file a complaint of rape. Consequently, as a result of there being no legal obligation for law enforcement to investigate cases ex officio, rape is not prosecuted in many situations.

21. Furthermore, women are not able or willing to file a complaint because they fear the perpetrator, which further demonstrates the need for investigations to be conducted ex officio and for proper victim protective measures to be put into place from the start of the investigation. Effectively, the lack of such provisions deny justice to survivors because the survivor, rather than the state, is required to bear the burden of the criminal proceeding as well as present the evidence required to prove the circumstances of the crime, all while likely not being afforded protective measures
22. The authors of this report would like to specifically draw the Committee's attention to the amendments to the Criminal Code of Russia (Article 128.1 part 5 - "Libel combined with the accusation of a person of committing a crime against sexual integrity and sexual freedom of the individual") put in place in December 2020, toughening the sanction for libel in relation to sexual violence crimes. This regulation, not only interferes with the right to freedom of expression, but also discourages victims of sexual violence to come forward and file a complaint because of fear of criminal prosecution and tough sentences. This also violates the right to be protected from inhuman treatment.
23. Moreover, while Russian law fails to ensure the public prosecution of sexual violence, law enforcement officials do not take seriously reports made by victims. Victims are faced with many obstacles, including the reluctance of law enforcement to register their allegations, verify their testimony and initiate criminal proceedings. The authors note that since the offence of 'beatings' was excluded from the Criminal Code due to recent legislative amendments and instead categorised as an administrative offence, there have been cases of rape where law enforcement qualify the case as a beating instead of registering it as rape. This administrative offence carries a lesser penalty and does not reflect the experience of the survivor of sexual violence.
24. Finally, reconciliation is often used and abused with the result that perpetrators of sexual violence escape any form of criminal punishment or repercussions for their criminal behaviour, including avoiding a criminal record. In practice, law enforcement officials are frequently responsible for pushing victims towards reconciling with their perpetrator. Furthermore, law enforcement has been seen to intentionally attempt to discourage the victim from filing an application by alleging the case will be futile or asking for 'softer' testimonies against the perpetrator or recording only data in the testimony which they consider to be easier to prove. Such treatment of victims is an example of secondary and repeated victimisation as they are essentially coerced into reconciliation and, because they acquiesce to resolving their case with reconciliation, this often leads law enforcement to distrust the victim's initial testimony, reinforcing the pattern of law enforcement not taking reports made by victims seriously.

Lack of support or prevention programmes for survivors

25. Further compounding their experience, survivors of sexual violence are not provided with free legal aid which makes it even more difficult to access justice, including being able to protect and exercise their full rights during the verification of statements and investigative actions.
26. There are also no state programmes for the rehabilitation of victims of sexual violence in the Russian Federation. The cooperation of public authorities with the few NGOs involved in the rehabilitation of victims of sexual violence is hampered by the threat of being designated with the status of “foreign agent”, which exists with respect to all NGOs due to the selectivity and unpredictability of the application of legislation on foreign agents.
27. In addition to lack of support there is also lack of prevention. In accordance with international good practice and experience, comprehensive sexuality education is considered to be one of the ways sexual and gender-based violence can be prevented.²¹ Currently, sexuality education in schools of the Russian Federation is not included in the state school curricula in any form.

Action to address Female Genital Mutilation (FGM)

28. FGM is not specifically prohibited by law in the Russian Federation. It is estimated that at least 1240 girls in the North Caucasus region of Russia are at risk of being subjected to FGM every year.²² This estimate is based on a 2016 sociological study by the Russian Justice Initiative in the Republics of Dagestan, Ingushetia and Chechnya which included interviews with 25 survivors of FGM and 17 experts with knowledge of the practice. The report estimates that the prevalence of FGM varies in different districts, ranging from 90-100% in the Botlikhsky and Tsuntinsky regions to 50% in the Tlyaratinsky region, to an estimated 25% of women and girls who have been subjected to FGM or who are at risk in the Tsyumadinsky and Kizlyarsky regions.²³
29. In 2016, following the Russian Justice Initiative’s qualitative study of FGM in the North Caucasus, the State Duma initiated a draft law to introduce criminal punishment (up to 10 years’ imprisonment) for carrying out FGM for religious motives.²⁴ Changes were proposed to Article 136 of the Russian Criminal Code to include the following offences in relation to FGM:

²¹ International technical guidance on sexuality education: an evidence-informed approach, Paris: UNFPA, 2018: <https://www.unfpa.org/publications/international-technical-guidance-sexuality-education>

²² Yu. A. Antonova, S.V. Siradzhudinova (Russia Justice Initiative, 2018), *The practice of female genital mutilation in Dagestan: strategies for its elimination*.

²³ Yu. A. Antonova & S. V. Siradzhudinova, *Female Genital Mutilation of Girls in Dagestan* (Russian Federation), 2016. Available at http://www.srji.org/upload/iblock/52c/fgm_dagestan_2016_eng_final_edited_2017.pdf

²⁴ О внесении изменений в статью 136 УК РФ. Вносится депутатом Государственной Думы М.П. Максаковой-Игенбергс. Проект №1153660-6 [On amendments to article 136 of the RF Criminal Code. Submitted by State Duma deputy M.P. Maksakova-Igenbergs, Project №1153660-6] [http://asozd2.duma.gov.ru/addwork/scans.nsf/ID/3D22C9D2ECAB4FEE4325801400324CB3/\\$File/1153660-6.PDF?OpenElement](http://asozd2.duma.gov.ru/addwork/scans.nsf/ID/3D22C9D2ECAB4FEE4325801400324CB3/$File/1153660-6.PDF?OpenElement)

- a. *“Part 2: Discrimination carried out against women for religious motives and manifested in partial or complete removal of the external genitalia, explained by the goals of a religious cult, is punished by imprisonment from a period of 5 to 7 years.”*
 - b. *“Part 3: Discrimination carried out against underage girls and manifested in the partial or complete removal of the external genitalia, explained by the goals of a religious cult, is punished by imprisonment from a period of 7 to 10 years.”*
30. We share some concerns regarding the way in which these proposed provisions have been framed which are not fully in compliance with Article 38²⁵ of the Istanbul Convention which provides that all intentional conducts should be criminalised, and not just those which have been carried out for ‘religious motives’ or ‘explained by the goals of a religious cult’. We also echo the recommendations made by the Committee in its General Recommendation No 14. The law was not adopted and there have been no other efforts since then to pass a law against FGM in the Russian Federation.
31. The investigation of the first criminal case of FGM on a nine year old girl in Ingushetia is currently ongoing. The NGO the Russian Justice Initiative (RJI) appealed to the Directorate of the Investigative Committee for Ingushetia with a request to check the activities of the management and doctors of the Aybolit clinic in Magas, where FGM was performed in June 2019. A criminal case has been initiated under Article 115 of the Criminal Code (causing minor harm to health), the first such case in Russia considered in court. The accused in the case is the children's gynaecologist Izanya Nalgieva. However, no case has been filed against the clinic's leadership, or the father or stepmother of the girl who initiated the procedure, which indicates the need for a specific law against FGM. The Russian Federation ought to thoroughly investigate and prosecute in this case, including by initiating a wider investigation into the persons who may be involved in such harmful procedures.

Recommendations

32. We respectfully urge the Committee to make the following proposed recommendations to the government of the Russian Federation regarding the violations of the Convention addressed in this report:

Definitions of sexual violence crimes

- Amend Articles 131, 132 and 133 of the Criminal Code of Russia to ensure that the definitions of rape and other sexual violence crimes are in compliance with standards developed by international law and cover all forms of sexual violence acts committed without the victim's voluntary, genuine and willing consent.

²⁵ Article 38 – Female genital mutilation: Parties shall take the necessary legislative or other measures to ensure that the following intentional conducts are criminalised:

- a) excising, infibulating or performing any other mutilation to the whole or any part of a woman's labia majora, labia minora or clitoris;
- b) coercing or procuring a woman to undergo any of the acts listed in point a;
- c) inciting, coercing or procuring a girl to undergo any of the acts listed in point a.

- Ensure that sanctions for the above crimes correspond to the gravity of the crimes.

Marital rape

- Explicitly criminalise rape in marriage and intimate partner relationships as a separate article in the Criminal Code, or as an aggravating circumstance, within the existing sexual violence articles.

Child marriage and statutory rape

- Abolish the provision in Article 134 of the Criminal Code which expressly provides that if an adult person (over the age of 18) marries a girl below 16 with whom he has had sexual relations with her supposed consent, he will not be punished for the statutory rape.
- The proposal of the Russian Government to amend the Family Code and the age of marriage allowing persons under the age of 18 to enter into marriage are contrary to international law and are not justified in any circumstances. Russia should withdraw or revise the proposal and make sure that the age of marriage is fixed at 18 without exceptions.

Ex officio prosecutions and evidence

- Ensure that the Criminal Procedure Code of Russia provides that all sexual violence crimes are investigated/prosecuted ex officio by the State and that the investigation/prosecution does not depend on the complaint of the victim or their legal representative.
- Ensure that deterrent sanctions are imposed on perpetrators and effective remedies are provided for survivors.
- Ensure the investigators, prosecutors and judges are appropriately trained in order to apply a specific, gender-sensitive methodology for investigating sexual violence crimes.
- Ensure that the reconciliation procedures are not applied, either formally or informally, to leave perpetrators of sexual violence unpunished.
- Ensure that the laws do not criminalise victims of sexual violence who seek justice, and that any provisions that hinder them from reporting sexual abuse through fear of prosecution, are abolished.
- Remove overly burdensome evidence and corroboration requirements to prove rape, which is one of the main cases of impunity for perpetrators.

Awareness raising

- Ensure awareness-raising campaigns are conducted, including among law enforcement, about the serious nature of all forms of sexual violence (including marital rape and statutory rape) and that violence is not justified in any circumstances.
- Introduce comprehensive sexuality education into state educational programmes at various levels, aimed at empowering and protecting women and girls from gender-based and sexual violence.

FGM

- Strengthen the capacity of law enforcement authorities to protect women and girls from harmful practices, such as FGM, and encourage women and girls to file complaints without having to fear retribution or stigma through public awareness campaigns.
- Enact and adopt a comprehensive law that prohibits FGM and guarantees the protection of women and girls across the State who are at risk of undergoing FGM.
- Generate statistical and other relevant data to demonstrate the extent and impact of FGM across the Russian Federation.