

Secretariat of the Committee against Torture
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By Post and e-mail: cat@ohchr.org

22 June 2018

Re: Information on the Russian Federation for Consideration by the Committee against Torture at its 64th Session (23 July - 10 August 2018)

Dear Distinguished Committee Members,

We respectfully submit this letter to the Committee against Torture (“the Committee”) for its 64th session meeting, taking place 23 July 2018 - 10 August 2018, including on the Russian Federation’s sixth periodic report for review. Equality Now is an international human rights organization with ECOSOC status working to protect and promote the rights of women and girls worldwide since 1992, including through our membership network comprised of individuals and organizations in over 190 countries. Equality Now expresses its concern about human rights violations faced by women and girls in the Russian Federation. This letter focuses on the Russian Federation’s obligation under Article 2 (obligation to prevent torture, including through legislative measures) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“the Convention”) to address domestic violence, female genital mutilation, and discrimination in the law with regards to the exemption from punishment of offenders, including rapists, who marry their victims.

Exemption of rapists from punishment upon marriage

Equality Now is gravely concerned by provisions in the Russian Criminal Code that appear to allow perpetrators of rape or sexual assault to escape punishment upon marriage to or settlement with their victim. For example, Articles 75 and 76 of the Criminal Code appear to allow perpetrators of sexual assault to escape punishment upon settlement with their victims, through active repentance and thus cease to be considered “socially dangerous” or through reconciliation and restitution, if their crime is one of first offense and is classified under the Code as one of little or average gravity. This includes the offenses of “sexual coercion”, “sexual intercourse and other actions of a sexual character with a person who has not reached the age of sixteen years”, and “depraved actions”. Equality Now is particularly concerned by Article 134 of the Criminal Code, which provides that a perpetrator over the age of 18 who has sexual intercourse with a child between fourteen and sixteen years of age can escape punishment under the law by marriage to the victim if the court deems that the perpetrator ceases to be “socially dangerous” as a consequence of such marriage.¹ Article 13 of the Russian Family Code permits the adoption of regional laws allowing marriage under the age of 16.

Articles 134 of the Russian Criminal Code is clearly discriminatory in nature, and thus, according to Section V. on Protection for individuals and groups made vulnerable by discrimination or marginalization (paras. 20-22) of the Committee’s General Comment No. 2, “States parties should,

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therefore, ensure the protection of members of groups especially at risk of being tortured, by fully prosecuting and punishing all acts of violence and abuse against these individuals and ensuring implementation of other positive measures of prevention and protection.” In addition, the Comment explains that, “Being female intersects with other identifying characteristics or status of the person such as race, nationality, religion, sexual orientation, age, immigrant status etc. to determine the ways that women and girls are subject to or at risk of torture or ill-treatment and the consequences thereof. The contexts in which females are at risk include deprivation of liberty, medical treatment, particularly involving reproductive decisions, and violence by private actors in communities and homes,” (CAT/C/GC/2, ¶21-22) and in which a girl child or woman being forced to marry her rapist would certainly apply.

The Russian Federation must ensure that its laws on rape and sexual assault work to prevent future violence and provide justice to survivors by effectively deterring and appropriately punishing the commission of crimes. Of the 70% of rape cases that are reported to law enforcement in Russia, only 10% are taken up, of which only 1% reach verdicts². Legislative provisions which release perpetrators of sexual violence from criminal liability or punishment prevent access to justice to survivors and instead trivialise the trauma and harm perpetrated against them. Greater effort is required which must include, but is not limited to, reviewing and where necessary reforming laws on rape and sexual assault to ensure that they do not promote or undermine the impact of violence or re-victimize survivors. These legislative provisions alone appear therefore to violate the principles of protection from torture and other cruel, inhuman or degrading treatment or punishment under Article 2 of the Convention.

The Committee’s General Comment No. 2 paragraph 18 on the Implementation of Article 2 by States parties explicitly confirms the principle of protection with regard to gender-based violence, including rape, in stating “Since the failure of the State to exercise due diligence to intervene to stop, sanction and provide remedies to victims of torture facilitates and enables non-State actors to commit acts impermissible under the Convention with impunity, the State’s indifference or inaction provides a form of encouragement and/or de facto permission. The Committee has applied this principle to States parties’ failure to prevent and protect victims from gender-based violence, such as rape, domestic violence, female genital mutilation, and trafficking.” (CAT/C/GC/2, ¶18).

We also note that the Committee on the Rights of the Child’s joint recommendation with the Committee on the Elimination of Discrimination against Women on harmful practices recognizes that this specific “legislation that enables a perpetrator of rape and/or other sexual crimes to avoid sanctions through marriage to the victim,” is “contrary to the obligation of the States parties under both conventions” (CEDAW/C/GC/31- CRC/C/GC/18, ¶41). As Equality Now discusses in its report, *The World’s Shame - The Global Rape Epidemic - How Laws Are Failing to Protect Women and Girls*,³ these types of laws help fuel the global rape epidemic and, in addition to a being in violation of the Convention, are incompatible with the Sustainable Development Goals adopted by UN member states in September 2015.

The Human Rights Council, through the Universal Periodic Review Process, has made recommendations to the government of the Russian Federation to strengthen measures to combat violence against women, which includes sexual violence.⁴ Though these recommendations were accepted by the Government,⁵ the Russian Federation is failing to adequately prevent and punish instances of sexual assault due to the continued existence of such laws on its statute books.

Domestic Violence

In 2008, the Russian government reported that each year approximately 14,000 women die at the hands of their husbands or other relatives.⁶ (More recent data does not appear to be available, despite the

Russian government accepting a Human Rights Council (HRC or “the Council”) 2009 recommendation to collect statistical data on cases of violence against women, including domestic violence).⁷

Despite the pervasiveness of the problem, the government has taken steps that make it harder, rather than easier, to prevent and punish incidents of domestic violence. On 7 February 2017 a law came into force in Russia that amended Article 116 of the Criminal Procedure Code to exempt certain physical assaults on family members from criminal prosecution (including beatings of a spouse or child resulting in bruising or bleeding but not broken bones and as long as the incident has occurred only once in a year), rendering these offenses “administrative”. Additionally, under Article 20 of the Criminal Procedure Code, a multitude of domestic violence offenses remain classified under the law as suitable for only private prosecution (subject to very narrowly interpreted exceptions), requiring victims to investigate and prosecute offenses themselves.⁸

These provisions run counter to the recommendations made by the Committee and the Human Rights Council in their reviews of the Russian Federation. In 2012, the Committee expressed its concern about the “small number of complaints, investigations and prosecutions of acts of domestic violence and violence against women, including marital rape,”⁹ which can only be improved with a strengthening of the domestic violence legislative framework, and the Committee urged Russia to “**promptly, impartially and effectively**” investigate allegations of violence and prosecute perpetrators. In both its reviews, the Council recommended that the Russian Federation strengthen its laws on domestic violence and pass comprehensive legislation to deal with the issue.¹⁰ The Committee on Economic, Social and Cultural Rights and the Committee on the Elimination of Discrimination against Women (CEDAW) have also made similar recommendations, asking the Russian Federation to strengthen its laws on domestic violence.¹¹ Equality Now welcomes the Committee’s questions asked in its List of issues prior to Russia reporting in 2016 about “any steps taken to provide a definition of domestic violence in legislation and to ensure that all reported cases of violence against women are registered by the police” in addition to asking “what measures are taken to ensure victims of domestic violence and other forms of violence against women are provided with protection” (CAT/C/RUS/QPR/6 at ¶4) and notes that Russia did not really address these in any detail in its report.

Female Genital Mutilation

Equality Now is deeply concerned about the incidence of female genital mutilation (FGM) which at least 1200¹² girls in the North Caucasus region of Russia are subjected to every year. As mentioned above, the Committee has recognized FGM as a form of torture in its General Comment No. 2. In 2016, following the Russian Justice Initiative’s qualitative study of FGM in the North Caucasus, the State Duma initiated a draft law¹³ to introduce criminal punishment (up to 10 years’ imprisonment) for carrying out FGM for religious reasons. Changes were proposed to Article 136 of the Russian Criminal Code to include “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” and “part 3: Discrimination carried out against an 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.” However, the law was not adopted and the issue has not been discussed since.

Suggested Questions for the State Party

We would respectfully urge the Committee to raise with the Russian government the following questions with regard to violations of the Convention addressed in this letter:

- What steps is the Government taking to repeal or amend Article 134 and amend as

necessary Articles 75 and 76 of the Criminal Code, as well as any other provision that allow, explicitly or implicitly, exemption from punishment for perpetrators of rape and sexual assault upon any settlement with the victim?

- What efforts are being undertaken by the Government to comprehensively review and amend as necessary all other laws, policies and procedures relating to rape and sexual assault as needed to better prevent rape and sexual assault, provide access to justice for victims and effectively punish sexual violence crimes?
- What steps is the Government taking to revoke those amendments to the Criminal Code that allow for some acts of domestic violence to fall under the category of administrative offenses?
- What steps is the Government taking to specifically and comprehensively prevent and criminalize FGM?

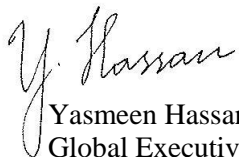
Suggested Recommendations for the State Party

We would respectfully urge the Committee to recommend to the Russian Federation with regard to violations of the Convention addressed in this letter:

- Amend or repeal Article 134 and amend as necessary Articles 75 and 76 of the Criminal Code.
- Revoke those amendments to the Criminal Code that allow for some acts of domestic violence to fall under the category of administrative offenses.
- Amend those provisions in the Code of Criminal Procedure that require victims of domestic violence to pursue private prosecution.
- Ultimately put in place and effectively implement comprehensive legislation criminalizing domestic violence and providing for prosecution by the state for all forms of domestic violence.
- Consider specific and comprehensive legislation to prevent and criminalize FGM.

Thank you very much for your kind attention, and please do not hesitate to contact us if we can provide further information.

Sincerely,



Yasmeen Hassan
Global Executive Officer

¹ Equality Now highlighted this finding in our recent report on rape laws around the globe entitled *The World's Shame. The Global Rape Epidemic: How Laws Around the World are Failing to Protect Women and Girls* (2017), available at <https://www.equalitynow.org/campaigns/rape-laws-report>

² Natalia Khodyreva, Saint Petersburg Women's Crisis Center, <http://tass.ru/obschestvo/3451382>

³ Available at <http://www.equalitynow.org/campaigns/rape-laws-report>

⁴ UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Russian Federation*, 6 Feb. 2009, A/HRC/WG.6/4/L.5 at ¶ 32; UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Russian Federation*, 8 Jul. 2013, A/HRC/24/14 at ¶¶ 140.109-110.

⁵ UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Russian Federation, Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, 5 June 2009, A/HRC/11/19/Add.1/Rev.1 at p. 6; UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Russian Federation, Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, 2 Sept. 2013, A/HRC/24/14/Add.1 at ¶¶ 7, 23.

⁶ ANNA National Centre for the Prevention of Violence, *Violence Against Women in the Russian Federation: Alternative Report to the United Nations Committee on the Elimination of Discrimination Against Women (CEDAW)*, (2010), p.6, available at http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/ANNANCPV_RussianFederation46.pdf

⁷ UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Russian Federation, Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, 5 Jun. 2009, A/HRC/11/19/Add.1/Rev.1 at ¶10.

⁸ Evidence shared by our partners in Russia make clear that these amendments have made it even more difficult for victims of domestic violence to pursue and achieve justice and protection from further victimization, ultimately creating a culture of impunity for perpetrators. Very often, when incidents of domestic violence are filed with the courts through the administrative procedure, the courts simply return the filings to the police on procedural grounds without holding a trial. Even if the court does adjudicate the case, a very low penalty is commonly imposed in the form of a fine.

⁹ Committee Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Concluding observations on the fifth periodic report of the Russian Federation*, CAT/C/RUS/CO/5, ¶14.

¹⁰ UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Russian Federation*, 5 Oct. 2009, A/HRC/11/19 at No. 32; UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Russian Federation*, 8 Jul. 2013, A/HRC/24/14 at ¶¶ 140.23, 140.106-108.

¹¹ Committee on Economic, Social and Cultural Rights, *Consideration of reports submitted by States parties under articles 16 and 17 of the Covenant: Russia*, 1 June 2011, E/C.12/RUS/CO/5 at ¶ 22(a); Committee on the Elimination of Discrimination against Women, *Concluding observations on the eighth periodic report of the Russian Federation*, 20 November 2015, CEDAW/C/RUS/CO/8 at ¶ 22(a).

¹² Yu. A. Antonova, S.V. Siradzhudinova (Russia Justice Initiative, 2016), *The practice of female genital mutilation in Dagestan: strategies for its elimination*. Report based on the results of a qualitative sociological study in the Republic of Dagestan, the Republic of Ingushetia and the Republic of Chechnya (Russian Federation).

¹³ О внесении изменений в статью 136 УК РФ. Вносится депутатом Государственной Думы М.П. Максаковой-Игенберге. 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)