**The Russian Federation’s Compliance with the Convention Against Torture**

**Suggested List of Issues Prior to Reporting Relating to Sexual Orientation and Gender Identity and Expression**

**Submitted by The Advocates for Human Rights**

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**The Advocates for Human Rights** (The Advocates) is a volunteer-based non-governmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law. Established in 1983, The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact finding, direct legal representation, education and training, and publications.

**Executive Summary**

1. The Russian Federation has failed to uphold its obligations under the Convention against Torture with respect to lesbian, gay, bisexual, transgender, and intersex (LGBTI) persons. Among other issues of concern, authorities in detention facilities fail to comply with Nelson Mandela Rule 7(a), which requires detaining authorities to gather “[p]recise information enabling determination of [the prisoner’s] unique identity, respecting his or her self-perceived gender.” Moreover, authorities fail to consult with transgender detainees to make housing decisions that include a thorough risk assessment to minimize the danger of torture and ill-treatment by other detainees and by detention facility staff. Instead, transgender detainees are often subjected to solitary confinement or are housed in sex-segregated facilities that increase the risk of torture or ill-treatment.
2. Moreover, law enforcement personnel subject LGBTI sex workers to violence, harassment, arbitrary arrest, and unlawful detention. In particular, authorities subject transgender sex workers endure insults, humiliation, and intimidation during arbitrary detention. LGBTI Russians report extremely low levels of trust in law enforcement.

**The Russian Federation fails to uphold its obligations under the Convention against Torture**

1. **Transgender people are particularly vulnerable to torture and ill-treatment in institutionalized settings.**
2. The Committee, in its 2018 Concluding Observations, expressed concern “at consistent reports that lesbian, gay, bisexual, transgender and intersex persons are subjected to violence because of their sexual orientation or gender identity, including physical attacks and other ill-treatment.”[[1]](#footnote-1) The Committee recommended that the Russian Federation “[e]nsure that those responsible for violent attacks and hate crimes against persons on the basis of their sexual orientation or gender identity . . . are charged, investigated, prosecuted and, if found responsible, punished; [and] . . . [p]rovide training to law enforcement officials and the judiciary on detecting and combating hate-motivated crimes, including those motivated by sexual orientation or gender identity.”[[2]](#footnote-2) The Committee also recommended that the Russian Federation “[b]ring the conditions of detention into line with international standards, including the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).”[[3]](#footnote-3)
3. Russian law does not provide any protection for transgender persons who are incarcerated. Transgender persons are particularly vulnerable to abuse in these institutionalized settings. Transgender people are more likely than other LGBTI persons to report experiencing physical, psychological, and sexual violence.[[4]](#footnote-4)
4. In early 2020, one non-governmental organization took up the case of a transgender woman. Russian authorities arrested her in late November 2019 on charges of distributing pornography. The offense carries a maximum penalty of ten years’ imprisonment. Authorities kept the transgender woman in solitary confinement for approximately two months.[[5]](#footnote-5)
5. On 3 June 2020, the court dismissed all of the defendant’s arguments and convicted the woman. The court imposed a fine of 50,000 rubles and additional wage garnishments for two years.[[6]](#footnote-6)
6. The non-governmental organization reports that for the woman to serve a term in prison would have been tantamount to a death sentence. The organization was greatly relieved that the court did not sentence the woman to a prison term.[[7]](#footnote-7)
7. Another transgender woman was sentenced to three years in prison in 2019 on trumped up pornography charges.[[8]](#footnote-8) She was forced to serve her sentence in a men’s penal colony, and according to Human Rights Watch, this incarceration leaves her “extremely vulnerable to abuse by both male detainees and guards.”[[9]](#footnote-9) A Russian court subsequently overturned her conviction, but she is likely to face a retrial before a different judge.[[10]](#footnote-10)
8. **Suggested questions** relating to incarceration of transgender persons:
	* How do authorities determine placement of transgender persons in sex-segregated jails and prisons? What procedures are in place to ensure compliance with Nelson Mandela Rule 7(a) and to ensure that authorities consult with transgender detainees to place the detainee in an incarceral setting that will reduce the risk of torture or ill-treatment, without resorting to administrative segregation or solitary confinement in violation of Rules 43-45?
	* What measures are in place to ensure the safety and security of transgender persons who are incarcerated?
	* Please provide disaggregated statistics about complaints brought by people in detention alleging torture or ill-treatment, both at the hands of detention staff and at the hands of other detained persons, and the response to each case. Please include disaggregation for sex and gender identity.
9. **The Russian Federation has failed to meet its obligations under the Convention with respect to LGBT sex workers.**
10. The Committee, in its 2018 Concluding Observations, expressed concern “at consistent reports that, in practice, fundamental legal safeguards against torture for detained persons often do not apply from the very outset of the deprivation of liberty and sometimes are not respected at all.”[[11]](#footnote-11) The Committee recommended that the Russian Federation ensure that “[a]ll detained persons are able, in practice, to have prompt access to a qualified independent lawyer or free legal aid, if necessary, especially during police interrogations; . . . [and] to challenge, at any time during the detention, the legality or necessity of the detention before a magistrate who can order the detainee’s immediate release and to receive a decision without delay.”[[12]](#footnote-12) The Committee also expressed concern that, “in practice detained persons do not have adequate access to an effective, safe and independent complaint mechanism and that those alleging torture face reprisals and area often counter-charged with making false accusations, resulting in additional prison time.”[[13]](#footnote-13) The Committee recommended that the Russian Federation “ensure that all persons, particularly those deprived of their liberty, have adequate access to an independent complaint mechanism through which they can transmit confidential allegations of torture or ill-treatment to an independent investigative authority.”[[14]](#footnote-14)
11. Sex work is unlawful in Russia both under criminal law and as an administrative offense.[[15]](#footnote-15) As a result, sex workers, including LGBTI sex workers, face torture and cruel, inhuman, and degrading treatment.[[16]](#footnote-16)
12. Law enforcement officers use the criminalization of sex work as a pretext for subjecting alleged sex workers to physical and sexual abuse. One non-governmental organization reported that in 2020, several transgender sex workers had reported to the organization that they had been attacked by police officers. The officers unlawfully broke into the sex workers’ dwellings. The officers then used threats and physical violence to extort money from the sex workers. One sex worker paid the police officers who broke into her home out of fear that if she did not, the officers would plant drugs on her and thereby frame her for a drug-related offense.[[17]](#footnote-17)
13. These arbitrary arrests of transgender sex workers often result in prolonged unlawful detention at police stations. Law enforcement officers at the detention facilities subject the sex workers to insults, humiliation, and intimidation, unlawfully detaining them for hours.[[18]](#footnote-18)
14. In a survey of more than 6,700 LGBTI persons in late 2019 and early 2020, the Russian LGBT Network found that 3% of transgender women and 3.5% of transgender men reported being unlawfully detained.[[19]](#footnote-19) For minors, the results were even higher: 3.8% of transgender girls and 4% of transgender boys reported being unlawfully detained.[[20]](#footnote-20) Not surprisingly, 73.3% of respondents reported that they did not or generally did not trust the police.[[21]](#footnote-21)
15. **Suggested questions** relating to sex workers:
	* What policies and procedures are in place to hold law enforcement officers accountable for violence directed toward, as well as extortion, arbitrary arrests, and unlawful detention of LGBT persons, including sex workers? How many such complaints have authorities received? What has been the response to each case?
	* What remedies are available to LGBT persons, including sex workers, who are subjected to violence, threats, arbitrary arrest, and unlawful detention at the hands of law enforcement?
	* What measures have authorities taken to build trust in law enforcement among members of the LGBT community?
1. Committee against Torture, *Concluding Observations on the sixth periodic report of the Russian Federation*, UN Doc. No. CAT/C/RUS/CO/6, 28 Aug. 2018, ¶ 32. [↑](#footnote-ref-1)
2. Id. ¶ 33(a), (c). [↑](#footnote-ref-2)
3. Id. ¶ 39(a). [↑](#footnote-ref-3)
4. Daniil Zhaivoronok & Kseniya Kamarina, Russian LGBT Network, Report: Quantitative data monitoring discrimination against LGBTI+ People (2020), fig. 6, available at https://lgbtnet.org/upload/iblock/c29/kolichestvennoe\_issledovanie.\_monitoring\_2019\_0.pdf. [↑](#footnote-ref-4)
5. Correspondence with The Advocates for Human Rights, 25 Jan. 2021, email on file with The Advocates for Human Rights. [↑](#footnote-ref-5)
6. Ibid. [↑](#footnote-ref-6)
7. Ibid. [↑](#footnote-ref-7)
8. Nicola Habersetzer, *Russian Trans Woman Sentenced to Three Years in Men’s Prison on Bogus Pornography Charges*, Human Rights Watch, 6 Dec. 2019, https://www.hrw.org/news/2019/12/06/russian-trans-woman-sentenced-three-years-mens-prison-bogus-pornography-charges#. [↑](#footnote-ref-8)
9. Ibid. [↑](#footnote-ref-9)
10. Alexandra Odynova, *Russia court overturns transgender woman’s child “pornography” conviction*, CBS News, Jan. 23, 2020, https://www.cbsnews.com/news/russia-court-overturns-transgender-woman-child-pornography-conviction-orders-retrial-today-2020-01-23/. [↑](#footnote-ref-10)
11. Committee against Torture, *Concluding Observations on the sixth periodic report of the Russian Federation*, UN Doc. No. CAT/C/RUS/CO/6, 28 Aug. 2018, ¶ 10. [↑](#footnote-ref-11)
12. Id. ¶ 11(a). [↑](#footnote-ref-12)
13. Id. ¶ 26. [↑](#footnote-ref-13)
14. Id. ¶ 27. [↑](#footnote-ref-14)
15. Ed Holt, *Ensuring Russia’s Sex Workers’ Rights Essential for Wider Gender Equality*, Inter Press Service News Agency, 27 Apr. 2020, available at http://www.ipsnews.net/2020/04/ensuring-russias-sex-workers-rights-essential-wider-gender-equality/. [↑](#footnote-ref-15)
16. Nina Nazarova, *S det’mi i bez vrednykh privychek. Kak v Rossii zhivut seks-rabotnitsy i kto im pomogaet*, BBC, 8 Feb. 2019, available at https://www.bbc.com/russian/features-47164892. [↑](#footnote-ref-16)
17. Correspondence with The Advocates for Human Rights, 25 Jan. 2021, email on file with The Advocates for Human Rights. [↑](#footnote-ref-17)
18. Ibid. [↑](#footnote-ref-18)
19. Daniil Zhaivoronok & Kseniya Kamarina, Russian LGBT Network, Report: Quantitative data monitoring discrimination against LGBTI+ People (2020), table 4, available at https://lgbtnet.org/upload/iblock/c29/kolichestvennoe\_issledovanie.\_monitoring\_2019\_0.pdf. [↑](#footnote-ref-19)
20. Ibid. [↑](#footnote-ref-20)
21. Id., fig. 10. [↑](#footnote-ref-21)