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GENDER-SPECIFIC PRISON REFORM: ADDRESSING HUMAN RIGHTS VIOLATIONS AGAINST WOMEN IN RUSSIA'S PRISONS

Courtney M. Skiles[†]

Abstract: Russia currently incarcerates women in conditions that amount to human rights violations. Women incarcerated in Russia's prisons experience not only oppression and abuse common to all those incarcerated in Russia, but also gender-specific harms. While Russia has signed on to many pivotal human rights treaties, it also has a long history of mass incarceration of its people. Today, the prison conditions for women in Russia reveal a need for reform. Reformers are challenged by a powerful State that has not prioritized the type of reform necessary to eliminate further harms done to incarcerated women. To ensure the rights of women guaranteed under Russian and international law, Russia must implement gender-specific prison reform. This reform must incorporate gender-specific language into Russia's penal code. International human rights laws and organizations can provide incarcerated women and their advocates with important tools. These tools could be used to encourage Russia to implement necessary gender-specific prison reform. This would be a positive step toward gender equality for women incarcerated in Russia's prison system.

I. INTRODUCTION

On October 24, 2011, an anonymous Russian citizen posted a YouTube video that unleashed national and international outrage.¹ A high angle, low quality camera shot unmistakably captures a dark holding cell, empty but for two poles, a table, and a thin unkempt young woman. She is wearing a blue shirt and standing next to the table.² Her legs are bare. A prison guard in fatigues looms around the woman as she stands with her head lowered.³ Suddenly, the guard hits her so hard across the face that she collapses.⁴ He pulls her hair, punches her, and kicks her.⁵ He stops, and her bare leg twitches.⁶ Then he hits her again.⁷

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¹ Lev Ponomaryov & Ostap Karmodi, *Hit, Kicked and Bruised: Beatings at Russian Women's Prison Caught on Video*, FRANCE 24 (Oct. 31, 2011), <http://observers.france24.com/content/20111031-russia-amur-hit-kicked-bruised-beatings-women-prison-caught-video> (citing MrArtur113, *Беспридел в ВФСИИ.mp4*, YOUTUBE (Oct. 24, 2011), <http://youtu.be/5SJ7fUARzhU>).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ See Ponomaryov & Karmodi, *supra* note 1.

⁷ *Id.*

A second video reveals a similar scene.⁸ The chief warden initially dismissed the videos as false; however, an investigation spurred by the authorities after the videos gained traction in national media revealed the identity of the abusive deputy warden.⁹ He was sentenced to two months in prison.¹⁰ Violent incidents are commonplace in Russia's prisons.¹¹ These videos merely push the harsh reality of state corruption and abuse of Russian prisoners into the public's consciousness.

The prison system is not exempt from the gender inequalities prevalent in Russian society. Women in Russia have comparatively fewer opportunities and less economic upward mobility than men in Russian society.¹² In addition to this, domestic abuse and emotional and physical violence directed at women are prevalent, with few avenues of recourse for victims of this violence.¹³ Though both men and women often suffer from physical abuse and poor conditions in Russia's prisons,¹⁴ women experience these harms differently. Women incarcerated in Russia's prison system experience unequal status to that of men and gender discrimination. These inequities require remedies that are tailored to women's experiences as a gendered group. Reform is needed throughout the Russian prison system, and indeed some reforms are currently underway.¹⁵

Often, access to resources is worse for incarcerated women than it is for incarcerated men; for example, men have more access to substance abuse programs and treatment for tuberculosis.¹⁶ The prison system often fails to ensure that female-specific medical needs are met, such as access to sanitary napkins.¹⁷ Because violence against women is prevalent in Russian society,¹⁸ women are increasingly committing violent crimes against their

⁸ *Id.* (citing MrArtur113, *Беспродел в УФСИН 2.mp4*, YOUTUBE (Oct. 24, 2011), <http://youtu.be/Daz9h7ASJH8>).

⁹ *Id.*

¹⁰ *Id.*

¹¹ WORLD ORGANIZATION AGAINST TORTURE, VIOLENCE AGAINST WOMEN IN RUSSIA: A REPORT TO THE COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS 314 (2003).

¹² Nadezda Shvedova, *Gender Politics in Russia*, in LINDA RACIOPPI & KATHERINE O'SULLIVAN, GENDER POLITICS IN POST-COMMUNIST EURASIA 147, 157-61 (2009).

¹³ *Id.* at 157-61.

¹⁴ See generally *General Information About MCPR*, MOSCOW CENTER FOR PRISON REFORM, <http://www.prison.org/english/mcprgen.htm> (last visited Apr. 5, 2012).

¹⁵ See Andrew E. Kramer, *Russia to Alter System of Penal Colonies*, N.Y. TIMES, Mar. 22, 2010, available at <http://www.nytimes.com/2010/03/23/world/europe/23russia.html>; *New Legislation to Cut Russia's Prison Population by a Third*, RT, Mar. 7, 2011, <http://rt.com/news/prime-time/penal-code-reform-medvedev>.

¹⁶ PENAL REFORM INTERNATIONAL, WOMEN IN PRISON IN RUSSIA: AT A GLANCE (2010), available at http://www.penalreform.org/files/Women in Prison in Russia_0.pdf.

¹⁷ *Id.*

¹⁸ WORLD ORGANIZATION AGAINST TORTURE, *supra* note 11.

male aggressors.¹⁹ However, there are no gender-sensitive trainings for prison personnel who work with women, which would decrease violence against incarcerated women and prevent re-traumatizing prior victims of abuse.²⁰ Nor are there mental health programs that work with women who have fallen victim to domestic violence.²¹ Because women face economic and social inequality in Russian society,²² it would behoove the criminal justice system to provide gender-sensitive alternatives to incarceration in order to reduce female recidivism or provide females with vocational training to ensure a safe transition back into society.²³ Such programs do not exist.²⁴ In addition, studies show that women experience incarceration differently than men do, with mental health issues and infliction of self-harm more prevalent in populations of incarcerated women.²⁵

Prisons, as structures built and run by men, fail to take into account important gender-specific accommodations for women and produce an environment where women face hostile conditions because of their gender. Women in Russia have protections under international human rights law; international human rights law specifically prohibits torture, inhuman or degrading treatment or punishment, and discrimination against women.²⁶ These international protections recognize that women around the world continue to be discriminated against and that certain measures are necessary to ensure the equality of men and women.²⁷ International human rights law requires that Russia take measures to ensure domestic legislation reflects international standards for gender equality.²⁸ Though Russia incorporated

¹⁹ L. Alpern, Community Center for Prison Reform, *Women and the System of Criminal Justice in Russia: 2000-2002*, in MOSCOVSKAYA HELSINSKAYA GRUPPA, SITUATION OF PRISONERS IN CONTEMPORARY RUSSIA (2003) (translated by MBS Intellect Services Inc.), available at <http://www.mhg.ru/english/1F4FF6D>.

²⁰ PENAL REFORM INTERNATIONAL, *supra* note 16.

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ BRENDA J. VAN DEN BERGH, ET AL., IMPRISONMENT AND WOMEN'S HEALTH: CONCERNS ABOUT GENDER SENSITIVITY, HUMAN RIGHTS AND PUBLIC HEALTH 690 (2011), available at <http://www.who.int/bulletin/volumes/89/9/10-082842.pdf>.

²⁶ See Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46 (Dec. 10, 1984), available at http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9&chapter=4&lang=en (last visited Apr. 22, 2012) (Russia is a party to this Convention); Convention on the Elimination of All Forms of Discrimination Against Women, G.A. Res. 34/180, U.N. DOC. A/34/46, (Dec. 18, 1979), available at http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en (last visited Apr. 7, 2012) (Russia is a party to this Convention).

²⁷ Convention on the Elimination of All Forms of Discrimination Against Women, *supra* note 26, preamble.

²⁸ *Id.* arts. 2(a)-(g).

gender equality into its constitution,²⁹ true equality between men and women has not been achieved.³⁰

International human rights law is a tool for Russia's incarcerated women and their advocates to become empowered to challenge Russia's criminal justice system. Incarcerated women and their advocates can use this international legal framework to encourage gender-specific national prison reform as part of an overall plan to reform the system. Human rights abuses against Russians by the Russian State necessitate this reform. International human rights law supports incorporating gender-specific language into Russian legislation in order to expand the rights of women in prison, and ensure their equality with men. Political change and eliminating further abuses by those in power must ultimately come from the people of a state. However, external pressure on Russia from other states and international bodies can aid reform of its broken domestic prison system. Incarcerated Russian women can use international human rights law to protect themselves against the types of abuses depicted in the aforementioned videos.

Part II of this comment provides a background on human rights law and the Russian prison system. It highlights the discrepancies between Russia's international legal commitments and the conditions in its prisons. Part III discusses the issues facing women in Russian prison colonies today. Part IV explores legal mechanisms under current international human rights law to support gender-specific policy solutions in Russian prison colonies. This type of targeted reform can give incarcerated women the tools they need to advocate for the incorporation of gender-specific language into Russia's penal code.

II. EXAMINATION OF RUSSIA'S COMMITMENT TO HUMAN RIGHTS AS WELL AS ITS DOMESTIC PRISON SYSTEM REVEALS A NEED FOR EFFECTIVE PRISON REFORM IN RUSSIA TODAY

Russia was instrumental to the development of human rights documents,³¹ but it has a history of mass incarceration and brutalization of its populace.³² Russia has been slow to implement reform, including rights

²⁹ KONSTITUTSIYA ROSSIYSKOI FEDERATSII [KONST. RF] [CONSTITUTION] art. 19.

³⁰ *Gender Equality and Social Institutions in Russian Federation*, OECD SOCIAL INSTITUTIONS AND GENDER INDEX, <http://genderindex.org/country/russian-federation> (last visited April 5, 2012).

³¹ See generally MARY ANN GLENDON, *A WORLD MADE NEW: ELEANOR ROOSEVELT AND THE UNIVERSAL DECLARATION OF HUMAN RIGHTS* (2001).

³² See PENAL REFORM INTERNATIONAL, *supra* note 16; *Gulag: Soviet Forced Labor Camps and the Struggle for Freedom*, GULAG: MANY DAYS, MANY LIVES: A PROJECT OF THE ROY ROSENZWEIG CENTER

for its incarcerated population, especially women. It is useful to examine the paradox between Russia's participation in international development of human rights and Russia's shameful Gulag³³ history to create a background to a discussion on prison reform. Upon further examination of the prison conditions in Russia today, it is clear that truly positive reform has not been realized for women.

A. *Important International Human Rights Documents and Russia's Historical Gulag System Create the Framework to Analyze Prison Reform for Women in Russia*

In a 2008 memo disclosed by Wikileaks, Ambassador William J. Burns of the United States Embassy in Moscow expressed strong doubt about Russian prison reform, stating that “[t]he nature of the system, which has not substantively varied as it has evolved from tsarist prisons to the [G]ulag to today’s system, nurtures the spread of disease, abuse, and corruption.”³⁴ To understand the Russian prison system today, it is relevant to explore Russia’s former system of incarceration and oppression while also exploring its adherence to international human rights law.

Russia was a founding member of the United Nations³⁵ and is a permanent member of its Security Council.³⁶ The United Nations General Assembly adopted the Universal Declaration of Human Rights (“Declaration”) in 1948.³⁷ The Declaration was an international response to the horrendous human rights abuses that occurred during World War II.³⁸ Its drafters intended it to give international human rights legitimacy.³⁹ These rights had evolved over the course of world history (as told by Western thinkers), to instill power in the rational individual subject and displace the

FOR HISTORY AND NEW MEDIA, GEORGE MASON UNIVERSITY, <http://gulaghistory.org/nps/onlineexhibit/stalin> (last visited April 5, 2012).

³³ “Gulag” refers to the forced labor penal system that was created by the Soviet Union shortly after the 1917 revolution. It grew under Joseph Stalin’s campaign to collectivize agriculture in the 1930s and eventually turn the Soviet Union into an industrial power. People imprisoned in the camps suffered greatly, and many died. *Gulag: Soviet Forced Labor Camps and the Struggle for Freedom*, *supra* note 32.

³⁴ AMBASSADOR WILLIAM J. BURNS, VIEWING CABLE 08MOSCOW531, RUSSIAN PRISONS (Feb. 27, 2008), <http://wikileaks.tetlab.org/cable/2008/02/08MOSCOW531.html>.

³⁵ Press Release, U.N. Dept. of Public Information, United Nations Member States (July 3, 2006), available at <http://www.un.org/News/Press/docs/2006/org1469.doc.htm>.

³⁶ *Members*, UNITED NATIONS SECURITY COUNCIL, <http://www.un.org/sc/members.asp> (last visited Apr. 8, 2012).

³⁷ Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. DOC A/RES/217(III) (Dec. 10, 1948), available at <http://www.ohchr.org/EN/UDHR/Pages/Introduction.aspx>.

³⁸ DAVID WEISSBRODT ET AL., INTERNATIONAL HUMAN RIGHTS: LAW, POLICY, AND PROCESS 9 (4th ed. 2009); *Human Rights: An Overview*, LEGAL INFORMATION INSTITUTE, CORNELL UNIVERSITY LAW SCHOOL, http://www.law.cornell.edu/wex/human_rights (last visited Apr. 5, 2012).

³⁹ *Human Rights: An Overview*, *supra* note 38.

power of natural law and the sovereign king.⁴⁰ The rights in the Declaration revolve around the individual and include the right to life, liberty, security of person, freedom of expression, and protections from arbitrary arrest and imprisonment without a fair trial.⁴¹

In 1950, two years after the Declaration was adopted, the Council of Europe promulgated the European Convention for the Protection of Human Rights and Fundamental Freedoms (“European Convention”).⁴² This convention created human rights obligations for all member states, including Russia.⁴³

At the same time as the legal international human rights framework came into existence, Russia’s former incarnation, the Union of Soviet Socialist Republics (“Soviet Union”) operated a system of forced labor camps, known as Gulags.⁴⁴ The Gulag began in 1934 as a means to fulfill the economic need for a national workforce to achieve Soviet industrialization and to thwart internal opposition to Premier Joseph Stalin’s regime.⁴⁵ Aleksandr Solzhenitsyn’s forceful critique on Soviet labor camps, *Gulag Archipelago*, portrays the horrors of the system.⁴⁶ A New York Times writer and scholar of Russia reviewed Solzhenitsyn’s book in 1974, calling it “a journey into debasement and death, into grotesque torture, execution, rape, starvation, thirst, disease and more.”⁴⁷ The Soviet Union’s 1933 penal code enabled the government to incarcerate people for all “anti-Soviet” action, and by 1940, the stability of the Soviet Union depended on this system of forced labor, both politically and economically.⁴⁸ It is estimated that between four and twelve million people were incarcerated by Stalin’s system, which later dissolved in 1956 under Premier Nikita Khrushchev’s de-Stalinization movement.⁴⁹ It was while the Soviet Union’s Gulags were

⁴⁰ Handout from Louis Wolcher, Professor of Law, University of Washington School of Law, *The Story of Western Elite Thought Told in Four Stages* (Oct. 4, 2011) (on file with author).

⁴¹ WEISSBRODT, *supra* note 38, at 13.

⁴² THE COURT IN BRIEF, EUROPEAN COURT OF HUMAN RIGHTS, *available at* http://www.echr.coe.int/NR/ronlyres/DF074FE4-96C2-4384-BFF6-404AAF5BC585/0/Brochure_en_bref_EN.pdf.

⁴³ *Id.*

⁴⁴ LAURA PIACENTINI, SURVIVING RUSSIAN PRISONS: PUNISHMENT, ECONOMY AND POLITICS IN TRANSITION 28-33 (2004).

⁴⁵ *Id.*

⁴⁶ *See generally* ALEKSANDR I. SOLZHENITSYN, GULAG ARCHIPELAGO 1918-1956: AN EXPERIMENT IN LITERARY INVESTIGATION (Thomas P. Whitney & Harry Willetts trans., 1998).

⁴⁷ Stephen F. Cohen, *The Gulag Archipelago*, N.Y. TIMES, June 16, 1974.

⁴⁸ PIACENTINI, *supra* note 44, at 28-33.

⁴⁹ *Id.*

in full operation⁵⁰ that leaders ratified the Declaration, establishing rights for all.⁵¹

For prisoners subjected to an inhuman system of forced labor and brutal conditions such as the Gulag,⁵² the Universal Declaration may seem futile. The Declaration itself has no independent enforcement mechanisms and therefore is mostly expressive through the United Nations' Member States.⁵³ Indeed, the fundamental values laid out in the Declaration can be used to fulfill the inimical political goals of these states, which can harm relations between countries and legitimize questionable unilateral goals.⁵⁴ Moreover, the Declaration does not obligate uninterested states to act when clear violations occur.⁵⁵ Since ratification of the Declaration, the Russian government has been the intermediary: the government holds power over human rights provisions and those who need their protections the most.⁵⁶ A woman in the Russian prison system needs more than the Declaration to provide her with actual access to the rights laid out in international human rights law.

For women in Russian prisons, however, the Declaration may have an impact. It is extraordinarily rare for an international legal document to assert that “[a]ll human beings are born free and equal in dignity and rights.”⁵⁷ When the drafters of the Declaration asked thinkers and philosophers of the world to complete a series of questions about human dignity and rights, the

⁵⁰ *Id.*

⁵¹ See Universal Declaration of Human Rights, *supra* note 37.

⁵² *Gulag: Soviet Forced Labor Camps and the Struggle for Freedom*, *supra* note 32.

⁵³ WEISSBRODT, *supra* note 38, at 41.

⁵⁴ For example, when the United States invaded Iraq in 2003, it rationalized its actions in part because of severe human rights violations of Iraqi citizens occurring at the hand of the government. George W. Bush, President of the United States of America, President's Remarks at the United Nations General Assembly (Sept. 12, 2002), available at <http://georgewbush-whitehouse.archives.gov/news/releases/2002/09/20020912-1.html>. However, the U.S. invasion was highly criticized for using human rights as a façade for other, less noble political goals. Lieut. General Greg Newbold (Ret'd), *Why Iraq Was a Mistake*, TIME MAGAZINE, Apr. 9, 2006, available at <http://www.time.com/time/magazine/article/0,9171,1181629,00.html>.

⁵⁵ For example, international bodies failed to act during the 1994 Rwandan Genocide when the Hutu government systematically killed hundreds of thousands of Tutsi minorities. William Ferroggiaro, *The U.S. and the Genocide in Rwanda 1994: Evidence of Inaction*, THE NATIONAL SECURITY ARCHIVE Aug. 20, 2001, available at <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB53/index.html>. In 1995, Bosnian Serbs, backed by the Serbian government, summarily killed thousands of Bosnian Muslim men. The international community, which perhaps could have prevented these massacres, was slow to act in both cases, only intervening after the fact. Niaz Khan, *Genocide in Bosnia: Will the West Ever Act?*, THE TUSCALOOSA NEWS, May 2, 1993, available at <http://news.google.com/newspapers?nid=1817&dat=19930502&id=30cgAAAAIAAJ&sjid=l6UEAAAAIAAJ&pg=6364,352429>.

⁵⁶ WEISSBRODT, *supra* note 38, at 41.

⁵⁷ Universal Declaration of Human Rights, *supra* note 37, art. 1.

results supported the Declaration's goals.⁵⁸ Indeed, answers showed that the philosophies in various regions of the world valued common tenets that supported the Declaration's concept of fundamental rights.⁵⁹ While the drafters of the Declaration recognized the boundaries of universalism, their final product provided a framework for drafting binding covenants.⁶⁰ From the Declaration came several conventions that operate as binding treaties and give the Declaration power.⁶¹ These conventions include the 1973 Covenant on Economic, Social and Political Rights, the Covenant on Civil and Political Rights ratified the same year, the 1979 Convention on the Elimination of All Forms of Discrimination against Women, and the 1984 Convention against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment.⁶² In its own way, the Declaration also created a common—though limited⁶³—international legal, political, and social language regarding human rights that academics and activists can use sixty years later to advocate for the persecuted, such as women imprisoned in Russia.

B. *Effective Reform Has Not Been Realized in Russia's Prison System*

As of March 1, 2012, the Russian Criminal Justice system housed about 60,500 women—8.1% of the total 747,100 people incarcerated in the country.⁶⁴ The number of incarcerated females in Russia grew by 15,000 people during the period between July 2005 and July 2007, reaching as high as 63,000.⁶⁵ Since then, the number of incarcerated women in Russia has decreased only slightly.⁶⁶

⁵⁸ GLENDON, *supra* note 31, at 73.

⁵⁹ *Id.*

⁶⁰ *See generally id.*

⁶¹ WEISSBRODT, *supra* note 38, at 33-35.

⁶² Four documents make up the International Bill of Human Rights: 1) the Covenant on Economic Social and Cultural Rights, 2) the Covenant on Civil and Political Rights (both ratified by Russia in 1973), 3) the Declaration, and 4) the First Optional Protocol to the International Covenant on Civil and Political Rights. WEISSBRODT, *supra* note 38, at 840. Subsequent conventions include the 1979 Convention on the Elimination of All Forms of Discrimination against Women, ratified by Russia in January of 1981; and the 1984 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified by Russia in 1987. *Databases, UNITED NATIONS TREATY COLLECTION*, <http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en> (last visited Apr. 5, 2012).

⁶³ *See, e.g.*, Handout from Louis Wolcher, Professor of Law, University of Washington School of Law, *Additional Texts on Human Rights and Cultural Relativity* (on file with author) (Walter Benjamin's discussion of the words *Brot* and *pain*).

⁶⁴ *World Prison Brief: Russian Federation*, INTERNATIONAL CENTRE FOR PRISON STUDIES, http://www.prisonstudies.org/info/worldbrief/wpb_country.php?country=118 (last visited Apr. 5, 2012).

⁶⁵ BURNS, *supra* note 34, para. 6.

⁶⁶ *Id.*

Russia operates more than 700 prisons and jails, which are broken down into four levels.⁶⁷ Temporary police facilities hold people who are arrested and who have charges pending against them; pretrial detention facilities (“SIZOs”) hold people who have been charged and are awaiting trial.⁶⁸ Lower security labor colonies house people convicted of lesser crimes, while those convicted of dangerous crimes go to high-security prisons.⁶⁹ Female prison colonies house convicted women, and sometimes their young children.⁷⁰

Russia facilitates a cycle of crime for women who are poor and without options when the government does not address their needs; indeed, many women are in prison for theft and drug-related crimes.⁷¹ Though Russia has been working to reform its criminal justice system, there is still far too little consideration given to the promotion of gender equality and protection of the rights of women and girls.⁷² The World Organization Against Torture asserts that because Russia does not provide greater opportunities for women, the country has “fallen victim to the larger global phenomenon of the feminization of poverty.”⁷³

Russian criminal laws contain some articles that govern the treatment and status of women in the criminal justice system.⁷⁴ However, with the exception of a law preventing women from receiving the death penalty,⁷⁵ these laws are mostly limited to the status of incarcerated women as child-bearers, and seem to focus more on the status and rights of children incarcerated with their mothers. For example, if a woman is pregnant or has a child under fourteen years of age, a sentence may be postponed and then reduced or cancelled unless the crime is particularly grave.⁷⁶ The prisons may set up nurseries for children under three-years-old who are incarcerated with their mothers.⁷⁷ Mothers of children in the nurseries and pregnant women must receive access to at least fifty percent of the money in their personal accounts.⁷⁸ Women incarcerated with their young children are

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ PENAL REFORM INTERNATIONAL, *supra* note 16.

⁷¹ QUAKER COUNCIL ON HUMAN RIGHTS, WOMEN IN PRISON: A REVIEW OF THE CONDITIONS IN MEMBER STATES OF THE COUNCIL OF EUROPE, COUNTRY REPORT: RUSSIA (2007).

⁷² PENAL REFORM INTERNATIONAL, *supra* note 16.

⁷³ WORLD ORGANIZATION AGAINST TORTURE, *supra* note 11, at 305.

⁷⁴ *Id.*

⁷⁵ UGOLOVNY KODEKS ROSSIISKOI FEDERATSII [UK RF] [The Criminal Code of the Russian Federation] art. 59.

⁷⁶ *Id.* art. 82.

⁷⁷ Alpern, *supra* note 19.

⁷⁸ *Id.*

entitled to improved living conditions, specialized medical services, and more rations and clothing.⁷⁹ Their exercise cannot be restricted, nor can they be placed in isolation cells.⁸⁰ Incarcerated women who have children in the prison's nursery, who are pregnant, or who have recently given birth cannot be placed in a punishment ward.⁸¹ They may not be subjected to an enhanced security prison regime.⁸²

Russian criminal laws that focus on the rights of children and their incarcerated mothers are commendable. Nevertheless, these laws do not provide equal access to services, nor prevent exposure to violence for women in prison, as could a more comprehensive plan to remedy or equalize women's status in Russian prisons and society. In order to create a safe, rehabilitative prison environment, Russian criminal laws governing the treatment of incarcerated women need to incorporate gender-specific language outside of merely one's maternal capacity in order to ensure gender equality and protect the rights of incarcerated women as laid out by international human rights law.

III. A POWERFUL RUSSIAN STATE AND INCARCERATED WOMEN'S LACK OF VOICE PREVENT CRUCIAL GENDER-SPECIFIC PRISON REFORM

Prison reform presents a significant challenge in Russia because the State is enormously powerful and centralized, compared with other industrialized nations. This section analyzes the political context in which prison reform exists in Russia. Though reform is often stifled, Russia is experiencing a growing civil society and an increase in institutions that support international human rights. Incarcerated women in Russia are oppressed in gender-specific ways that call for effective reform. Gender-specific reform is necessary to protect the human rights of these incarcerated women.

A. *Russia's Political State Stifles Positive Reform*

As Vladimir Putin—Russia's former president, outgoing prime minister and current president-elect—has noted, Russia's economic and political power under its first President Boris Yeltsin⁸³ was disorganized.⁸⁴

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² Alpern, *supra* note 19.

⁸³ Boris N. Yeltsin was the first president of Russia after the fall of the Soviet Union. He was democratically elected in 1991, and he resigned on December 31, 1999. TIMOTHY J. COLTON, *YELTSIN: A LIFE* 1 (2008).

Since 1999, Putin has maintained a powerful, orderly state.⁸⁵ He has grown the state's power, stifled political opposition,⁸⁶ and taken a hard stance on crime.⁸⁷ Citizens have limited political power,⁸⁸ which makes reform—the upheaval of a norm, such as a failed prison system—supremely difficult. However, there is hope for those most affected by these restrictive policies.

In December 2011, Russians took to the streets in peaceful protest, responding to the December 4 Russian parliamentary elections that left Putin's "United Russia" party well ahead of others.⁸⁹ Many international observers and Russian citizens considered the elections fraudulent.⁹⁰ Protests grew, and continued when Putin won the March 2012 presidential election.⁹¹ Additionally, crowds have booed Putin and his party at recent public gatherings.⁹² Indeed, prisoners also are becoming more organized, with political protests—including hunger strikes and jailbreaks—gaining more traction.⁹³ On a disputed date between December 2007 and January 2008, incarcerated people in a prison colony in the Amor region staged a protest where 142 men slit their own wrists in protest of harsh prison conditions.⁹⁴ The shock tactic of slicing one's wrists or neck has proven to be an effective protest against mass beatings in prisons.⁹⁵

Perhaps most significantly, the last few years have seen an increase across Russia of independent human rights organizations, media outlets, think tanks, academic departments, election watchdogs, and non-governmental organizations.⁹⁶ However, "[b]ecause their efficacy is so limited, so circumscribed by the Kremlin, they do not constitute a true civil society; rather, they are an archipelago of islands in a vast sea, barely connected to each other and ignored, at best, by the political élite,"⁹⁷ suggested historian and human rights group Memorial's founder, Arseny Roginsky. Roginsky compares human rights activists' limited ability to

⁸⁴ David Remnick, *The Civil Archipelago: How Far Can the Resistance to Vladimir Putin Go?*, NEW YORKER, Dec. 19, 2011.

⁸⁵ PETER BAKER & SUSAN GLASSER, KREMLIN RISING 5-9 (2005).

⁸⁶ A.O., *A Russian Awakening*, ECONOMIST, Dec. 11, 2011, <http://www.economist.com/blogs/easternapproaches/2011/12/protest-russia-0>.

⁸⁷ *Times Topics: Vladimir V. Putin*, N.Y. TIMES, http://topics.nytimes.com/top/reference/timestopics/people/p/vladimir_v_putin/index.html (last visited Apr. 5, 2012).

⁸⁸ BAKER & GLASSER, *supra* note 85.

⁸⁹ *Times Topics: Vladimir V. Putin*, *supra* note 87.

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² Remnick, *supra* note 84.

⁹³ *Russian Prison Brutality*, VOA News YOUTUBE (Apr. 4, 2008), <http://youtu.be/e9ipVo10mf0>.

⁹⁴ *Id.*

⁹⁵ BURNS, *supra* note 34, para. 7.

⁹⁶ Remnick, *supra* note 84.

⁹⁷ *Id.*

advance their message with Solzhenitsyn's famous description of Stalin's prison camps in *Gulag Archipelago*.⁹⁸ Roginsky's message is clear: people—including Russian prisoners—without a voice in society must depend on the support of this “archipelago” of domestic human rights organizations, which are themselves confined by massive state power.⁹⁹ International organizations and bodies like the European Commission of Human Rights and the United Nations, equipped with covenants and significant resources, must challenge a broken prison system that has been allowed to continue in Russia.

B. Russia's Criminal Justice System Oppresses the Women in Russia's Prisons, and Current Prison Reform Efforts Ignore Their Needs

While poor prison conditions affect both Russia's incarcerated men and women, the lack of infrastructure for female inmates creates unequal access to resources and services that male prisoners are afforded.¹⁰⁰ In a similar vein, the violence that pervades Russia's prison system affects incarcerated males and females alike, and reform is necessary for both populations.¹⁰¹ However, women and men are subjected to violence differently and understand it differently in a society where domestic violence is prevalent.¹⁰² Gender-neutral policies allow the perpetuation of gendered violence, and in turn the unequal status of men and women in Russian society. Laws tailored to incarcerated women are recommended.

To its credit, Russia is working to reform its penal system,¹⁰³ albeit insufficiently, as it is implementing reform in a gender-neutral way. In 2010, Russia's President Dmitry Medvedev implemented sweeping reform measures that will change the way prisoners are held; notably, by 2020, common barracks will be replaced with cellblocks in new prisons, a method more common to Western incarceration practices.¹⁰⁴ Additionally, non-violent offenders will be separated from violent offenders and recidivists.¹⁰⁵ In March 2011, Medvedev took further steps toward reform when he signed legislation reducing or eliminating mandatory prison sentences for sixty-

⁹⁸ *Id.*; see SOLZHENITSYN, *supra* note 46.

⁹⁹ Remnick, *supra* note 84.

¹⁰⁰ VAN DEN BERGH ET AL., *supra* note 25; PENAL REFORM INTERNATIONAL, *supra* note 16.

¹⁰¹ See generally *General Information About MCP*, *supra* note 14.

¹⁰² WORLD ORGANIZATION AGAINST TORTURE, *supra* note 11, at 307.

¹⁰³ Kramer, *supra* note 15; *New Legislation to Cut Russia's Prison Population by a Third*, *supra* note 15.

¹⁰⁴ Kramer, *supra* note 15.

¹⁰⁵ *Id.*

eight minor crimes, reserving mandatory sentences for only grave crimes.¹⁰⁶ Judges now decide in each particular case whether or not the crime warrants incarceration.¹⁰⁷

Russian prison reforms speak to the power of international pressure for reform, however, the reforms do not address the specific needs of women incarcerated in Russia. Like its incarcerated men, Russia's incarcerated women endure severely overcrowded facilities, mostly unchecked physical abuse from authorities or *aktivs*,¹⁰⁸ and horrendous conditions that lead to severe or fatal health problems—most notoriously tuberculosis and HIV/AIDS.¹⁰⁹

Unlike male prisoners, however, incarcerated women face a host of problems specific to their gender.¹¹⁰ Women suffer similar discrimination in prison systems around the world due to the fact that prison systems' architecture, security systems, healthcare facilities, family access plans, and vocational training programs were designed for men, without considering women.¹¹¹ The international community recognizes that women deserve specific rights because of their gender,¹¹² and that these rights should be implemented in prison reform.¹¹³

Russia's prison system is not different. Russian prisons were also designed for men,¹¹⁴ and everything from prison infrastructure to access to services is unable to handle specific needs of women.¹¹⁵ Incarcerated women in Russia are exposed to sexualized violence and a lack of resources specific to their gender, which calls for prison reform that takes gender into account.

¹⁰⁶ *New Legislation to Cut Russia's Prison Population by a Third*, *supra* note 15.

¹⁰⁷ *Id.*

¹⁰⁸ A U.S. official at the U.S. Embassy in Moscow spoke with Lev Ponomarev, a prisoner's rights advocate, and reported on the two-tiered system of security that allows corruption to exist. Officials protect the outer layer of the facility, but a 2005 Ministry of Justice initiative also allowed prison officials to select certain prisoners—called *aktivs*—to enforce order in the prison in exchange for privileges and protections. William Smirnov of the President's Council on Human Rights defended this policy on the grounds that it has been in place for a long time, but was now formalized. In one example, a man selected as an enforcer inside the prison was punished with solitary confinement when he did not comply. BURNS, *supra* note 34.

¹⁰⁹ JONATHAN WEILER, HUMAN RIGHTS IN RUSSIA: A DARKER SIDE OF REFORM 38-43 (2004).

¹¹⁰ PENAL REFORM INTERNATIONAL, *supra* note 16.

¹¹¹ MEGAN BASTIK & LAUREL TOWNHEAD, WOMEN IN PRISON: A COMMENTARY ON THE UN STANDARD MINIMUM RULES FOR THE TREATMENT OF PRISONERS, QUAKER UNITED NATIONS OFFICE, at v (2008).

¹¹² Convention on the Elimination of All Forms of Discrimination against Women, *supra* note 26, preamble.

¹¹³ U.N. OFFICE ON DRUGS AND CRIME, HANDBOOK FOR PRISON MANAGERS AND POLICYMAKERS ON WOMEN AND IMPRISONMENT (2008).

¹¹⁴ PENAL REFORM INTERNATIONAL, *supra* note 16.

¹¹⁵ *Id.*

Before enumerating the gender-specific harms violence inflicts on incarcerated women, it is worthwhile to explore the general problems with violence in the Russian prison system. Extreme physical violence in Russian prisons is a norm, and corruption exacerbates the practice.¹¹⁶ In 2011, Amnesty International reported that law enforcement officials commonly use torture and other unlawful disciplinary punishment against detainees and prisoners, including denial of necessary medical care.¹¹⁷ This abuse plainly violates Russia's Constitution, which provides that "[n]o one shall be subject to torture, violence or other severe or humiliating treatment or punishment."¹¹⁸ Russian law does not permit authorities to overstep their duties or force citizens to give evidence.¹¹⁹ However, it was reported in 2009 that one-third of the complaints received by Russia's human rights ombudsman involve law enforcement violations.¹²⁰ Prosecutors oversee correctional facilities and are responsible for prosecuting cases.¹²¹ However, because torture is not defined, prosecutors may only bring lesser charges against those who torture, such as simple assault or exceeding authority.¹²² Corruption and collusion between the police, investigators, and prosecutors also serves to undermine investigations.¹²³

Prison guards have been caught beating prisoners on video.¹²⁴ One such video shows guards marching prisoners past dogs to invoke fear in the prisoners, stretching them out on tables, and beating them with billy-clubs.¹²⁵ A news broadcast told of the Ministry of Justice's special forces beating every prisoner in a SIZO, meant to be a message from the new warden.¹²⁶ In isolation, these incidents have been punished, but little has been done to acknowledge or eradicate the problem as a whole.¹²⁷

¹¹⁶ AMNESTY INTERNATIONAL, ANNUAL REPORT 2011: RUSSIAN FEDERATION (2011), available at <http://www.amnesty.org/en/region/russia/report-2011>.

¹¹⁷ *Id.*

¹¹⁸ KONSTITUTSIYA ROSSIYSKOI FEDERATSII [KONST. RF] [CONSTITUTION], art. 21.

¹¹⁹ *Comments of the Russian Federation On the Report By Commissioner for Human Rights Of the Council of Europe, T. Hammarberg, Following His Visit to the Russian Federation From 12 to 22 May 2011*, COMMISSIONER FOR HUMAN RIGHTS (Oct. 10, 2011), <https://wcd.coe.int/ViewDoc.jsp?id=1851417>.

¹²⁰ US DEP'T OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, 2010 HUMAN RIGHTS REPORT: RUSSIA (2010), available at <http://www.state.gov/documents/organization/160474.pdf>.

¹²¹ *Id.*

¹²² *Id.*

¹²³ AMNESTY INTERNATIONAL, *supra* note 116.

¹²⁴ Ponomaryov & Karmodi, *supra* note 1.

¹²⁵ *Prisoner Being Beaten in Russian Prison Camp*, YOUTUBE (Sept. 11, 2011), http://www.youtube.com/watch?v=_R8aQRl_HpA.

¹²⁶ *Russian Prison Brutality*, VOA NEWS ON YOUTUBE (April 4, 2008), <http://www.youtube.com/watch?v=e9ipVo10mf0>.

¹²⁷ BURNS, *supra* note 34.

Like men, women in Russian prisons also experience violence, but they experience it differently. At least seventy-five percent of Russia's female population has experienced domestic violence.¹²⁸ A majority of women in prisons worldwide are likely to have experienced gender-based violence before they arrived, including domestic violence or sexual abuse.¹²⁹ Sexual harassment and violence can then become problems for women while in Russian prisons.¹³⁰

Though gender-based violence is a problem specific to incarcerated women in Russia, there are no policies in place to address these issues. There are limited avenues for reporting such abuses whether in prison or not—a woman who wishes to report a rape is often prevented by officials from making a report, and prosecutors often refuse to investigate.¹³¹ These hurdles predictably increase when a woman is incarcerated and her rapist is a prison official. Additionally, there is no effort to hire female staff who may be less likely to commit sexual violence against other women,¹³² nor are there trainings where personnel work to understand the long-lasting effects of incarcerated women's histories of violence and abuse.¹³³

Often women commit gender-specific crimes that are connected to their marginalization in both society and even the criminal justice system of which they become a part. Russian criminologists do not study female crime, because female contribution to crime is considered insignificant compared to overall criminal incidences.¹³⁴ However, indifference to female criminology can in effect generate female crime itself¹³⁵ in that it prevents inquiry into why Russian women commit crimes, and what can be done to curb criminal behavior. This, then, fails to identify the root causes of criminal behavior so as to prevent the crime from the outset.

Women make up an increasingly large share of offenders of grave crimes and especially grave crimes,¹³⁶ or intentional crimes considered to necessitate the longest prison terms stipulated in Russia's penal code.¹³⁷ An increased number of penal colonies report that women are in prison for

¹²⁸ WORLD ORGANIZATION AGAINST TORTURE, *supra* note 11, at 307.

¹²⁹ BASTIK & TOWNHEAD, *supra* note 111, at v; VAN DEN BERGH ET AL., *supra* note 25, at 690-91.

¹³⁰ WORLD ORGANIZATION AGAINST TORTURE, *supra* note 11, at 314.

¹³¹ CENTER FOR REPRODUCTIVE RIGHTS, SUPPLEMENTARY INFORMATION ON THE RUSSIAN FEDERATION (2003).

¹³² U.N. OFFICE ON DRUGS AND CRIME, *supra* note 113, at 35.

¹³³ VAN DEN BERGH ET AL., *supra* note 25, at 691.

¹³⁴ Alpern, *supra* note 19.

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ UGOLOVNY KODEKS ROSSIJSKOI FEDERATSII [UK RF] [The Criminal Code of the Russian Federation] art. 15.

killing men in their families, such as husbands or fathers.¹³⁸ This suggests that female incarceration may be linked with the high incidences of domestic violence in Russian households, with reports showing that three-quarters of Russian women suffer from domestic violence.¹³⁹ These numbers are thought to be a low estimate.¹⁴⁰ Unhappiness and a high level of familial violence are the primary causes of criminalization and marginalization of women in Russian society.¹⁴¹ Women who have been victims of domestic violence need support while in prison;¹⁴² however, there are few mechanisms in prisons for dealing with the difficult experiences many women have faced prior to incarceration. Gender-specific training programs for prison personnel working with these women do not exist.¹⁴³ In addition, Russia lacks comprehensive vocational training and post-release integration programs specific to women, which could reduce recidivism for certain types of crime.¹⁴⁴

Overcrowded prison colonies cause many health problems for prisoners.¹⁴⁵ Overcrowding is especially egregious in SIZOs, where prisoners are held up to thirty days without charge if they are suspected of being in a criminal gang.¹⁴⁶ They are often denied legal services and are not offered bail.¹⁴⁷ Overcrowding is exacerbated by the detention of those awaiting trials delayed¹⁴⁸ due to inefficiencies in an underfunded and overwhelmed judiciary.¹⁴⁹ The Russian criminal justice system is built on a policy of maximum incarceration, even for petty crimes.¹⁵⁰ Instead of striving to reduce the amount of people incarcerated and find more effective means to rehabilitate offenders, the state defaults to incarceration, creating a severe imbalance of policy and budget. The criminal code promotes overcrowding by supporting longer sentences, with incarceration as the main element of punishment, and permitting authorities to detain people for days without charges.¹⁵¹ Prisoners have reported incarceration at facilities at 200-

¹³⁸ WORLD ORGANIZATION AGAINST TORTURE, *supra* note 11, at 314.

¹³⁹ *Id.*

¹⁴⁰ *Id.* at 307.

¹⁴¹ Alpern, *supra* note 19.

¹⁴² VAN DEN BERGH ET AL., *supra* note 25, at 691.

¹⁴³ PENAL REFORM INTERNATIONAL, *supra* note 16.

¹⁴⁴ *Id.*

¹⁴⁵ WEILER, *supra* note 109, at 39-40.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.* at 44-45.

¹⁵⁰ *Id.* at 38-43.

¹⁵¹ *Id.*

300% capacity, sharing beds and sleeping in shifts.¹⁵² Women's colonies are often overcrowded, with as many as sixty women in the same large dorm-style rooms meant to accommodate fewer.¹⁵³

Health conditions in Russian prisons are poor due to overcrowding, inadequate medical care, poor diets, and abuse of prisoners. Incidences of tuberculosis ("TB") and HIV/AIDS among the entire prison population are higher than the general population, though rates of TB are down since 1999.¹⁵⁴ Although typically TB patients are separated from uninfected prisoners,¹⁵⁵ overcrowding can result in the spread of the disease.¹⁵⁶ Often, illness is used as a coercive measure, as in the case of Vera Trifonova, an incarcerated businesswoman who suffered from severe diabetes and chronic kidney failure, was nearly blind, and required a wheelchair.¹⁵⁷ According to human rights observers, she was denied treatment as a way of forcing her to provide false testimony.¹⁵⁸ She died on April 30, 2010.¹⁵⁹ The lead investigator was fired and charged with criminal negligence.¹⁶⁰

Incarcerated women in Russia facing overcrowded conditions and inadequate medical care must bear additional problems specific to their gender. Women have far less access to substance abuse programs than men, and almost no access to TB treatment—fifty-nine male prison colonies treat TB, while only one female colony provides TB treatment.¹⁶¹ Incarcerated women around the world struggle with mental health problems, which can often include post-traumatic stress disorder, depression, and self-harming behavior.¹⁶² However, it is rare that a woman in this situation receives adequate medical attention.¹⁶³

In Russia, incarcerated women also do not receive proper hygienic or reproductive healthcare.¹⁶⁴ Russian officials often have failed to issue proper hygienic materials to women in prison who are menstruating, forcing them to use technological cotton found at factories or taken from clothes or mattresses as tampons.¹⁶⁵ While women have access to sinks and toilets,

¹⁵² *Id.*

¹⁵³ PENAL REFORM INTERNATIONAL, *supra* note 16.

¹⁵⁴ BURNS, *supra* note 34.

¹⁵⁵ *Id.* para. 13.

¹⁵⁶ WEILER, *supra* note 109, at 38-43.

¹⁵⁷ U.S. DEP'T OF STATE, *supra* note 120.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ PENAL REFORM INTERNATIONAL, *supra* note 16.

¹⁶² VAN DEN BERGH ET AL., *supra* note 25, at 690.

¹⁶³ *Id.* at 691.

¹⁶⁴ PENAL REFORM INTERNATIONAL, *supra* note 16.

¹⁶⁵ WORLD ORGANIZATION AGAINST TORTURE, *supra* note 11.

they are only permitted to shower one time per week—a major complaint amongst incarcerated women who live in filthy facilities.¹⁶⁶ Mothers and children—incarcerated in the same facility until the child is three years old—are often kept in separate quarters, and mothers are prevented from developing maternal bonds and important mothering skills they will need once they leave prison.¹⁶⁷ In addition, prison wardens and guards have not received training in order to sufficiently support or work with women incarcerated with their children.¹⁶⁸

Additionally, incarcerated women are often transferred—in violation of Russian penal code—to prisons far from the jurisdiction in which their case was heard.¹⁶⁹ According to the Open Health Institute, this distance for both men and women results in a lack of visitors, which isolates prisoners and can negatively affect their rehabilitation and reintegration into society after incarceration.¹⁷⁰ However, with few prisons for women, the government transfers one out of every two women to a different region.¹⁷¹ Though in Russian culture women are more likely than men to be the primary caregivers in their families,¹⁷² the government transfers Russia's incarcerated women based on its own convenience, without regard for a woman's needs or her maternal status.¹⁷³ This can result in fractured healthcare, distancing from one's family, and difficulties with resettlement.¹⁷⁴ Women have reported incarceration 2,000 kilometers from their homes and families.¹⁷⁵ In addition, women are often brought through transit prisons on what could be a two-month journey to their final destination, regardless of where the final destination is actually located.¹⁷⁶ Transit prison conditions are particularly horrendous, as they are often unsanitary, overcrowded, and poorly equipped to provide medical care.¹⁷⁷ Women in these transit prisons are sometimes beaten and starved.¹⁷⁸

¹⁶⁶ PENAL REFORM INTERNATIONAL, *supra* note 16.

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ BURNS, *supra* note 34.

¹⁷¹ WORLD ORGANIZATION AGAINST TORTURE, *supra* note 11, at 314.

¹⁷² JULIE HEMMET, EMPOWERING WOMEN IN RUSSIA: ACTIVISM, AID, AND NGOS 6 (2007).

¹⁷³ WORLD ORGANIZATION AGAINST TORTURE, *supra* note 11, at 314.

¹⁷⁴ VAN DEN BERGH ET AL., *supra* note 25, at 690.

¹⁷⁵ PIACENTINI, *supra* note 44, at 4.

¹⁷⁶ WORLD ORGANIZATION AGAINST TORTURE, *supra* note 11, at 314.

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

C. *Gender-Specific Prison Reform Is a Necessary Component to Russia's Overall Prison Reform*

Gender-specific problems require gender-based solutions. Incarcerated women around the world and in Russia must live in a prison system where the infrastructure was designed for incarcerated men, not women.¹⁷⁹ The violence and lack of access to vital services that women face in Russia and prisons worldwide often directly relate to their gender.¹⁸⁰ The United Nations urges nations to adopt a gender-sensitive approach to prison reform that is tailored to the specific needs of women in prison.¹⁸¹

Though women and men have guarantees of equal rights and equal opportunities under Article 19 of the Russian Constitution,¹⁸² implementing these rights remains difficult.¹⁸³ Incarcerated women in Russia have few gender-sensitive alternatives to incarceration that are tailored to meet the specific requirements of female offenders aside from statutes making certain accommodations for pregnant women. Nor do women have pre- or post-release reintegration programs that are tailored to meet their needs when they leave or enter society.¹⁸⁴ Russia does not have gender-specific training programs for prison officials and personnel working with women in prison.¹⁸⁵

To achieve successful prison reform for women in Russia's prisons, Russia must adopt the measures outlined in the 2008 United Nations Handbook for Prison Managers and Policymakers on Women and Imprisonment ("Handbook"). The Handbook states that the international verbiage in U.N. documents affecting prison reform suggests a gender-neutral approach.¹⁸⁶ However, when U.N. documents are read together, the documents should be read to support specifically tailored reform for incarcerated women worldwide.¹⁸⁷ The Handbook supports this assertion with a series of resolutions dating back to 1980 that call on U.N. Member States to adopt policy and law tailored to the needs of women in prison, and

¹⁷⁹ PENAL REFORM INTERNATIONAL, *supra* note 16.

¹⁸⁰ U.N. OFFICE ON DRUGS AND CRIME, *supra* note 113, at 4.

¹⁸¹ *Id.* at 1.

¹⁸² KONSTITUTSIYA ROSSIYSKOY FEDERATSII [KONST. RF] [CONSTITUTION], art. 19.

¹⁸³ WORLD ORGANIZATION AGAINST TORTURE, *supra* note 11.

¹⁸⁴ PENAL REFORM INTERNATIONAL, *supra* note 16.

¹⁸⁵ *Id.*

¹⁸⁶ U.N. OFFICE ON DRUGS AND CRIME, *supra* note 113, at 4.

¹⁸⁷ Specifically, the United Nations Standard Minimum Rules for the Treatment of Prisoners, the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment and the Basic Principles for the Treatment of Prisoners. U.N. OFFICE ON DRUGS AND CRIME, *supra* note 113, at 4.

to adopt alternatives to incarceration for women.¹⁸⁸ The Handbook bases its recommendations for international prison management reform on major U.N. documents.¹⁸⁹ These documents include the United Nations Convention on the Elimination of All Forms of Discrimination against Women (“CEDAW”), the U.N. Standard Minimum Rules for the Treatment of Prisoners, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and the Basic Principles for the Treatment of Prisoners.¹⁹⁰ Russia has ratified and adopted these documents.¹⁹¹ In addition, Russia directly incorporates international law into its legal system.¹⁹²

Grounded in the language of these documents, the Handbook outlines prisoner reforms tailored to meet the needs of incarcerated women. It mandates that countries take affirmative action to counter-balance discrimination that incarcerated women face due to their relatively small number as compared to incarcerated men.¹⁹³ The Handbook requires a prison to provide programs and services that address the specific needs of women.¹⁹⁴ It outlines a management scheme that requires officials and personnel to be female, and for staff of female prisons to be trained and supported so they can handle the emotional stress of working in a prison.¹⁹⁵ The Handbook maintains that prisoners should be subjected to the minimum

¹⁸⁸ Perhaps most notably, the Handbook references the 2000 Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century, adopted by the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, which was endorsed by the General Assembly Resolution 55/59 on Dec. 4, 2000. U.N. OFFICE ON DRUGS AND CRIME, *supra* note 113, at 5. “[Thirteen] Member States of the United Nations declared that they committed themselves (a) to taking into account and addressing, within the United Nations Crime Prevention and Criminal Justice Programme, as well as within national crime prevention and criminal justice strategies, any disparate impact of programmes and policies on women and men; [and] (b) to the development of action-oriented policy recommendations based on the special needs of women as prisoners and offenders.” *Id.*

¹⁸⁹ *Id.* at 25.

¹⁹⁰ *Id.*

¹⁹¹ Convention on the Elimination of All Forms of Discrimination Against Women, *supra* note 26. Russia is a member of the Economic and Social Council, *see ECOSOC Members*, UNITED NATIONS ECONOMIC AND SOCIAL COUNCIL, <http://www.un.org/en/ecosoc/about/members.shtml> (last visited May 1, 2012), which adopted the Standard Minimum Rules for the Treatment of Prisoners, which are available at <http://www2.ohchr.org/english/law/treatmentprisoners.htm>. Russia is a member of the General Assembly. *See Member States*, UNITED NATIONS, <http://www.un.org/en/members> (last visited May 1, 2012). The Assembly adopted the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, which is available at <http://www.un.org/documents/ga/res/43/a43r173.htm>. The General Assembly also adopted the Basic Principles for the Treatment of Prisoners, *available at* <http://www2.ohchr.org/english/law/basicprinciples.htm>.

¹⁹² *Legal Research Guide: Russia*, LAW LIBRARY OF CONGRESS, <http://www.loc.gov/law/help/russia.php#introduction> (last visited Apr. 10, 2012).

¹⁹³ U.N. OFFICE ON DRUGS AND CRIME, *supra* note 113, at 28.

¹⁹⁴ *Id.*

¹⁹⁵ *Id.* at 30.

necessary security methods and avoid over-classification. It also suggests that authorities adopt dynamic security measures, including development of positive relationships with prisoners, diverting prisoners' energy to productive tasks, and adopting individualized programs for prisoners depending on particular needs.¹⁹⁶

The Handbook advocates clear policies to prevent violence and sexual abuse of women in prison.¹⁹⁷ Those prisoners who have been subjected to violence or sexual abuse should have the means to report incidents without fear of retaliation.¹⁹⁸ Prison officials should avoid using segregation as punishment due the particular distress isolation causes women, including a higher risk of depression and suicide.¹⁹⁹

Human rights documents that emphasize equal standing for men and women support vocational training and educational programming for incarcerated women, and encourage the prison management to facilitate links between the women and NGOs or other groups who can assist women as they re-enter society.²⁰⁰ The Handbook calls for equal access for women and men to sports facilities in prison.²⁰¹

The Handbook calls for improved and gender-specific healthcare and treatment for women and their children, who may live with them in prison.²⁰² It calls for the maintenance of a healthy prison environment, medical screening on entry into prison for physical and mental health risk or reproductive health concerns, and continued gender-specific medical support while incarcerated.²⁰³ Gender-specific preventative care should be on equal footing with care received by those who are not incarcerated, including pap smears, breast cancer and cervical cancer screening, and access to contraceptives.²⁰⁴ Pregnant women and women with children should not be imprisoned unless it is absolutely necessary; if a sentence necessitates imprisonment, childbirth should occur in a civilian hospital, and pre- and post-natal care received in prison must be equivalent to that received in the community.²⁰⁵ When countries allow children to be incarcerated with their mothers, policies should be flexible, mothers should have the maximum

¹⁹⁶ *Id.* at 31-34.

¹⁹⁷ *Id.* at 35.

¹⁹⁸ *Id.* at 38.

¹⁹⁹ *Id.* at 41.

²⁰⁰ *Id.* at 44-45.

²⁰¹ *Id.* at 47.

²⁰² *See id.*

²⁰³ *Id.* at 48-53.

²⁰⁴ *Id.* at 56.

²⁰⁵ *Id.* at 68-69.

possible access to their children, and children should not be treated as prisoners.²⁰⁶

Gender-specific prison reform as outlined by the Handbook and as mandated by international law is crucial to Russian prison reform, and must be implemented so that incarcerated women can realize their rights to gender equality and human rights.

IV. WOMEN IN RUSSIAN PRISONS CAN USE HUMAN RIGHTS LAW AS A TOOL TO ACHIEVE GENDER-SPECIFIC REFORM AND ADVOCATE FOR THEMSELVES

Recourse for incarcerated women in Russia is unlikely without significant national prison reform that incorporates international human rights law, and is specifically tailored to the needs of these women. International law's impact on an individual is strongest when realized through national legislation, courts, and administrative agencies.²⁰⁷ Russia's Constitution specifically incorporates international human rights law into its domestic law.²⁰⁸ Even so, Russia's constitutional and legislative implementation of international human rights has failed to spur necessary changes. Mass incarceration of prisoners and women, dilapidated prison facilities, and corruption amongst abusive officials remain pervasive.²⁰⁹

International law obligates Russia to commit to the improvement of its domestic prison conditions. However, Russia has not addressed the structural inadequacies inherent to its prison system, nor has Russia implemented actual reform, especially for its incarcerated women.²¹⁰ The European Court of Human Rights ("ECHR") produces significant amounts of case law specific to the needs of prisoners. While ECHR does not provide data on how many cases are filed by women,²¹¹ or discuss gender discrimination in a prison context, case law can nonetheless be used to ensure Russia meets its human rights obligations to incarcerated women in the country. Additionally, treaty-monitoring committees and U.N. documents supporting international human rights law will provide a basis to mandate the implementation of gender-specific prison reform in Russia for incarcerated females to realize their human rights.

²⁰⁶ *Id.* at 69.

²⁰⁷ WEISSBRODT, *supra* note 38, at 41.

²⁰⁸ KONSTITUTSIYA ROSSIYSKOY FEDERATSII [KONST. RF] [CONSTITUTION] arts. 15,17, 45.

²⁰⁹ BURNS, *supra* note 34.

²¹⁰ PENAL REFORM INTERNATIONAL, *supra* note 16.

²¹¹ See *Statistical Information*, THE EUROPEAN COURT OF HUMAN RIGHTS, <http://www.echr.coe.int/ECHR/EN/Header/Reports+and+Statistics/Statistics/Statistical+data> (last visited Apr. 10, 2012).

This section argues that jurisdiction exists for international bodies to address human rights violations in Russia. Next, it asserts that cases brought before the ECHR regarding prison conditions and physical harms can serve as guidance for cases brought by incarcerated women in Russia who experience similar abuses, in addition to gender inequality. It then argues that incarcerated women in Russia can use U.N. human rights bodies and work by human rights organizations to guide and influence female specific prison reform in Russia. Finally, this section argues that incarcerated women and their advocates have a basis in international and domestic law to advocate for the incorporation of gender-specific prison reform into Russia's penal code.

A. *Human Rights Bodies May Mandate Gender-Specific Prison Reform in Russia, Because Russia Has Failed to Implement Necessary Changes Required by Its Commitment to International Human Rights Law*

The Russian Constitution contains language that supports the human rights protections of incarcerated women seeking recourse from abuse or neglect while in prison. Russia's Constitution adopts international human rights law, and it provides that rights and liberties of Russian citizens, in conformity with the principles, norms, and treaties of international law must be recognized and guaranteed.²¹² Indeed, if a treaty contains other rules than those stipulated by law, the rules of the treaty shall apply.²¹³ The Constitution also guarantees state protection of human rights.²¹⁴

The Russian Constitution provides for freedoms such as those protected in the International Covenant on Civil and Political Rights and the European Convention. For example, no one may be subjected to torture, violence, or any other harsh or humiliating treatment or punishment.²¹⁵ The Constitution protects victims of state crimes and abuses of power, guarantees access to justice, and provides a right to compensation for unlawful action—or inaction—by the state or its agents.²¹⁶ Like the Covenant on Economic, Social and Cultural Rights, the Russian Constitution provides citizens with positive rights.²¹⁷ Women are constitutionally afforded the rights, liberties,

²¹² KONSTITUTSIIA ROSSIISKOI FEDERATSII [KONST. RF] [CONSTITUTION] arts. 15, 17, 45.

²¹³ *Id.*, art. 15.

²¹⁴ *Id.*, arts. 15, 17, 45.

²¹⁵ *Id.*, art. 21.

²¹⁶ *Id.*, arts. 52, 53.

²¹⁷ Ratified by Russia in 1973, the Covenant mandates that “[e]ach State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving

and opportunities that men enjoy.²¹⁸ Russian citizens have a right to life, and the right to healthcare and medical assistance.²¹⁹

Despite Russian citizens' extensive constitutional rights, the Russian and international human rights community has nevertheless uncovered several human rights abuses against incarcerated women and people in Russia.²²⁰ These abuses reveal structural problems that prevent reformation of the Russian prison system, and limited recourse for women in Russia's prison system who have been subjected to abuses or unequal treatment. Incarcerated women who wish to take legal action are limited to the mechanisms that exist in international human rights law.

To what extent is Russia beholden to international human rights bodies, and just how powerful are those bodies to help stop human rights abuses for women in prison? The Russian government has been unwilling to deal with indirect and direct abuse of women in prison in a way necessary to implement positive reform. Critics may argue that the international community would infringe on Russia's sovereignty if they were to exercise power or jurisdiction over domestic practices.²²¹ However, Russia is a signatory to all of the relevant international treaties and documents that govern the treatment of women. Russia has also incorporated human rights language—the same language used in binding international covenants—to outline the rights of its people. Critics may also argue that international human rights standards should be slowly implemented, and that Russia is taking progressive steps toward improving prison conditions for women. However, reports of prison conditions indicate continued, systemic problems that violate human rights standards. The steps that Russia has taken are not progressive enough show Russia's compliance with international human rights law. Russia could continue to fail to implement international human rights standards in its prisons, whether due to negligence, lack of the issue's priority on a federal level, budgetary constraints on the criminal justice system, or other reasons. Issues of impunity and corruption could persist, and could work to undo any implementation of these human rights standards by the government.

progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures." International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI), at II.2.1 (Dec. 16, 1966).

²¹⁸ KONSTITUTSIJA ROSSIJSKOI FEDERATSII [KONST. RF] [CONSTITUTION] arts. 19, 20.

²¹⁹ *Id.* arts. 20, 41.

²²⁰ PENAL REFORM INTERNATIONAL, *PRI in Russia* (May 2010); see also *General Information About MCPR*, MOSCOW CENTER FOR PRISON REFORM, <http://www.prison.org/english/mcprgen.htm> (last visited Apr. 3, 2012).

²²¹ Vladimir Putin, *Russia and the Changing World*, RIANOVOSTI, Feb. 27, 2012, <http://www.en.rian.ru/analysis/20120227/171547818.html>.

Ultimately, international bodies or incarcerated women in Russia's prisons cannot guarantee that Russia will comply with international standards. Barriers to positive reform exist, but international human rights remedies and bodies nonetheless have the power to pressure Russia and incentivize domestic compliance with international human rights standards in women's prisons. By pointing to international treaties ratified by Russia and the treaties' corresponding case law, Russia's incarcerated women and their advocates can use international human rights law as a tool to assert the rights of incarcerated women domestically. Russia must then take a clear, definitive step and incorporate gender-specific language in its criminal code as part of a broader prison reform, in order to recognize and address gender-specific needs for women in its prisons.

B. Women Who Have Claims for Violations of the Convention Should Subject Russia to Liability for Damages Before the European Court of Human Rights

Women living in poor prison conditions or who are subject to physical violence have viable claims under Article 3 of the European Convention, which provides that “[n]o one shall be subjected to torture or to inhuman or degrading treatment or punishment.”²²² Article 14 of the Convention provides that “[t]he enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex . . . or other status.”²²³ When read together, these articles work as a claim against the gender-specific harms that occur in Russian prisons.

Russia's 1998 ratification of the European Convention²²⁴ served as the main impetus for initiating a series of domestic prison reforms, including a 2002 Criminal Procedure Code that aligned Russia with other countries in the Council of Europe.²²⁵ Under Article 34, Russia's ratification also opened the door for individuals, non-governmental organizations, or groups of individuals to file applications with the European Court of Human Rights (“ECHR”) against a High Contracting Party in violation of the European Convention.²²⁶ Since Russia's ratification the Court has been inundated with applications from the country: as of July 22, 2011, there were 46,259 cases

²²² European Convention for the Protection of Human Rights and Fundamental Freedoms, art. 3.

²²³ *Id.*, art. 14.

²²⁴ EUROPEAN COURT OF HUMAN RIGHTS, RUSSIA: PRESS COUNTRY PROFILE (2011), available at http://www.echr.coe.int/NR/rdonlyres/7CF42EB0-0481-4ACD-9B49-1B92D396D126/0/PCP_Russia_en.pdf (last visited Apr. 5, 2012).

²²⁵ PIACENTINI, *supra* note 44, at 51.

²²⁶ European Convention for the Protection of Human Rights and Fundamental Freedoms, art. 34.

of alleged human rights violations against Russia pending before the ECHR.²²⁷ Among other violations, since 1998, the Court has found Russia responsible for 357 counts of inhuman or degrading treatment, 570 counts of violation of one's right to a fair trial, and 422 counts of violation of one's right to liberty and security.²²⁸ These claims are not filed in vain—Article 41 of the European Convention empowers the Court to grant “just compensation” to injured parties, a step that has made it a leader in victim compensation for human rights abuses.²²⁹

The ECHR is an important tool for an incarcerated woman with a claim against Russia for a violation of the European Convention. If her case comes before the Court and it finds in her favor, the Court can award damages for material or economic harm, non-pecuniary harm for suffering, and costs and expenses including legal fees, which the member states often respect.²³⁰ Only 149 of 7,617 petitions filed against Russia in 2011 have been decided by judgment,²³¹ demonstrating that many cases are dismissed. There is still hope for a plaintiff that the Court will either pick up his or her case or set a *de facto* precedent in a different case with similar claims and facts. Though holdings only officially affect the particular case before the Court, all case law developed by the court sets a *de facto* precedent for future cases, and member states may more readily comply with these decisions to avoid sanctions.²³² ECHR provides a forum for women in Russia's prisons who suffer gender-specific abuse to assert that poor prison conditions or violence amounted to a claim under Article 3 of the European Convention, which prohibits inhuman or degrading treatment or punishment, and a gender discrimination claim under Article 14, and that Russia should be liable.

1. *Gender Discrimination Claims Can Bolster Article 3 Analysis*

Gender discrimination arguments before the ECHR require a creative legal strategy. While Article 3 analysis is well developed in the realm of prison rights, the ECHR has not heard a case on the intersection between

²²⁷ EUROPEAN COURT OF HUMAN RIGHTS, *supra* note 224.

²²⁸ EUROPEAN COURT OF HUMAN RIGHTS, VIOLATIONS BY ARTICLE AND BY STATE (2011), available at http://www.echr.coe.int/NR/rdonlyres/2B783BFF-39C9-455C-B7C7-F821056BF32A/0/TABLEAU_VIOLATIONS_EN_2011.pdf.

²²⁹ WEISSBRODT, *supra* note 38, at 835.

²³⁰ *Id.* at 840.

²³¹ EUROPEAN COURT OF HUMAN RIGHTS, *supra* note 224.

²³² Yonatan Lupu & Erik Voeten, *The Role of Precedent at the European Court of Human Rights: A Network Analysis of Case Citations*, Jan. 1, 2010 (conference paper presented at the International Studies Association, 2010 Annual Meeting).

gender discrimination and prison conditions or the treatment of prisoners. The ECHR analysis of inhuman or degrading treatment alone would provide individual women with strong claims, and could lead to prison reform. However, the language in both the Convention and in subsequent court cases around Article 14 sex discrimination could provide an incarcerated Russian woman suffering abuses with a strategy, if read in conjunction with Article 3 reasoning.

In a gender discrimination case brought by an incarcerated woman, Article 14 must be invoked with Article 3, as Article 14 has been read as a subsidiary article to others in the Convention.²³³ A party does not have to prove the breach of a substantive article in order to file an Article 14 claim.²³⁴ Rather, the claim must fall within the realm of one or more of the other Convention articles.²³⁵ ECHR jurisprudence clarifying the Convention prohibits both different treatment of individuals in similar situations unless there is a “reasonable and objective” justification and equal treatment in significantly different situations unless there is a “reasonable and objective” justification.²³⁶ Sex discrimination cases are adjudicated over unjustified different treatment.²³⁷ To fall within “reasonable and objective,” a state must have a legitimate aim, and proportionality between the means employed and the ends sought.²³⁸

There are some clear hurdles to women bringing a gender discrimination case before the ECHR.²³⁹ The ECHR case law has placed sex under a suspect classification, and the court often applies a strict scrutiny level of review in sex discrimination cases; states must assert very weighty reasons for difference in treatment between men and women.²⁴⁰ However, the ECHR is inconsistent in its application of strict scrutiny and often defers to the state, or looks to the dominant norm among member states.²⁴¹ Additionally, while indirect discrimination has been addressed, the court is more likely to hear cases of direct and intentional gender discrimination, though most gender discrimination is indirect.²⁴²

²³³ Ivana Radacic, *Gender Equality Jurisprudence of the European Court of Human Rights*, 19 EUR. J. OF INT'L L. 841, 842 (2008).

²³⁴ *Id.*

²³⁵ *Id.*

²³⁶ *Id.* at 843.

²³⁷ *Id.* at 844.

²³⁸ *Id.*

²³⁹ *Id.* at 841.

²⁴⁰ *Id.* at 844.

²⁴¹ *Id.* at 849, 856.

²⁴² *Id.* at 844.

Though they will have to overcome these challenges, females incarcerated in Russia have a strong case of unequal treatment under Article 14. Under current Russian policy, they do not have nearly as many TB treatment programs or rehabilitation programs as men.²⁴³ Nor do they have as many vocational training programs, which would encourage economic stability once out of prison.²⁴⁴ They are often removed from the jurisdiction in which they were convicted at very high rates, and are therefore often removed from their families.²⁴⁵ An incarcerated woman bringing a case will likely have to prove a form of direct discrimination, which she can do by bringing forward affirmative policies that dictate where resources are allocated, and where they are not.

Even if direct discrimination is not found, her case would be bolstered by either the poor prison conditions, the physical abuse she faces, or both. One could argue that these exist for her in a way that is not experienced by men, due to factors not currently considered by Russian prison policy: was she domestically abused and re-traumatized by abuse in prison, as many women are? Had she been treated for TB before incarceration, but then denied treatment in prison due to lack of facilities? These are issues to put before the ECHR that highlight how gender discrimination can underlie issues of poor prison conditions and physical abuse in prison.

2. *Poor Prison Conditions in Russia's Female Prison Colonies Trigger ECHR Article 3 Analysis and Gender Discrimination Analysis*

Incarcerated women and their advocates can use ECHR decisions about torturous, inhuman or degrading prison conditions to pressure Russia to implement gender-specific prison reform. Russia's poor prison conditions alone violate the European Convention. In the 2002 case *Kalashnikov v. Russia*, the ECHR found that the Russian government had violated Article 3 when Valeriy Yermilovich Kalashnikov was treated inhumanely in a Russian prison.²⁴⁶ The Court found that during Kalashnikov's four years and ten months in prison—a stay prolonged due to a delayed trial—he was exposed to horrendous conditions that violated Article 3. As the Court stated, Article 3 under the Convention “enshrines one of the most fundamental values of democratic society” and “prohibits in absolute terms

²⁴³ PENAL REFORM INTERNATIONAL, *supra* note 16.

²⁴⁴ *Id.*

²⁴⁵ *Id.*

²⁴⁶ The Court also found that Russia had violated Article 5(3), the right to stand trial within a reasonable time, and Article 6(1), the right to a hearing within a reasonable time. *Kalashnikov v. Russia*, Eur. Ct. H. R. (2002).

torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behavior."²⁴⁷ Kalashnikov endured severe overcrowding, which "in itself raises an issue under Article 3," unsanitary conditions including pest infestations and crude toilets, and exposure to people with infectious diseases such as TB and syphilis.²⁴⁸

The *Kalashnikov* case expanded the ECHR's notion of "inhuman" treatment. Previously, the ECHR had held that "inhuman" treatment includes premeditated acts applied at length that cause actual bodily injury or intense physical or mental suffering, and that "degrading" treatment arouses in victims fear, anguish, and inferiority capable of humiliating and debasing them.²⁴⁹ In the *Kalashnikov* case, the Court expanded this notion and reasoned that, although there was an absence of intent with respect to "degrading" treatment, the prison environment that Kalashnikov endured amounted to degrading treatment under Article 3.²⁵⁰ The Court specifically enumerated degrading treatment consisted of the overcrowded and unsanitary conditions, their effect on Kalashnikov's health and well-being, and the length of time he was detained.²⁵¹ The Court awarded him a small amount of damages.²⁵²

The facts and reasoning of an ECHR case on the treatment of those in prison aids the analysis of women's prison conditions because the Court has ruled similarly in a context where prisoners were severely deprived of a basic need, deprived of something for a prolonged period of time, or exposed to unsanitary conditions.²⁵³ As *Kalashnikov* points out, intent to expose a prisoner to harmful conditions need not be proved. The Court reaffirmed the *Kalashnikov* decision when it found in subsequent cases that distress and hardship based on overcrowded prisons, stifling air, and limited access to activity outside the cell had surpassed a base level of severity, and amounted to degrading treatment under Article 3.²⁵⁴ The state's inability to provide consistent or quality access to water or food,²⁵⁵ medical treatment,²⁵⁶

²⁴⁷ *Id.*

²⁴⁸ *Id.*

²⁴⁹ *Kalashnikov v. Russia*, Eur. Ct. H. R. (2002).

²⁵⁰ *Id.*

²⁵¹ *Id.*

²⁵² *Id.*

²⁵³ See, e.g., *Kalashnikov v. Russia*, Eur. Ct. H. R. (2002), *Mandic and Jovic v. Slovenia*, Eur. Ct. H.R. (2011) (5774/10 and 5985/10); *Struel and Others v. Slovenia* (2011) (5903/10, 6003/10 and 6544/10), *Khudobin v. Russia*, Eur. Ct. H. R. (2006), *A.B. v. Russia*, Eur. Ct. H. R. (2011).

²⁵⁴ *Mandic and Jovic v. Slovenia*, Eur. Ct. H.R. (2011) (5774/10 and 5985/10); *Struel and Others v. Slovenia* (5903/10, 6003/10 and 6544/10).

²⁵⁵ *Modârca v. Moldova*, Eur. Ct. H. R. (2007).

proper space, and fresh air has been considered a violation of Article 3's prohibition of inhuman and degrading treatment by the ECHR.²⁵⁷ Russia has an affirmative obligation to provide a person with adequate medical care, timely treatment, and a minimum amount of medical monitoring.²⁵⁸ Poor conditions and inadequate care are grounds for filing an application with the ECHR. In summary, incarcerated women in Russia may have a claim under the European Convention, due to the unsanitary conditions they face in prisons.

3. *The Physical Violence Incarcerated Women Experience in Russia Also Invokes ECHR Article 3 Analysis*

Along with unsanitary conditions, women could have a claim under the European Convention for the physical violence they face while incarcerated. Article 3 cases involving physical violence or deprivations as punishment could be brought in conjunction with an Article 14 gender discrimination claim.

Past cases demonstrate that it is the state's responsibility to monitor violence in prisons, including violence between inmates where the primary perpetrator is not a prison personnel. In a 2011 ECHR case, Nikolay Preminyin alleged a violation of Article 3 due to severe and systematic beatings by his fellow prisoners resulting in concussion and other injuries.²⁵⁹ The Court held that Russia's failure to take affirmative steps to prevent further violence and to adequately investigate violated Article 3.²⁶⁰

In the 2008 case *Maslova and Nalbandov v. Russia*, the ECHR found that Russian police officials had been improperly protected with impunity after repeatedly raping and torturing female witnesses to a murder.²⁶¹ In a statement that is also applicable to incarcerated women who experience physical violence of all kinds, the *Maslova* Court took note of the power imbalance between the victims and their abusers.²⁶² The Court considered the offense more abhorrent given a victim's complete vulnerability and the

²⁵⁶ Press Release, *European Court of Human Rights, Judgments Concerning Albania, Austria, Croatia Greece, Italy, Moldova, Poland, Romania, Russia, Spain and Turkey* (Oct. 18, 2011) (discussing *Pavalache v. Romania*).

²⁵⁷ Press Release, *European Court of Human Rights, Florea v. Romania: Applicant's Subjection to Passive Smoking in Detention was in Breach of the Convention* (Sept. 9, 2010).

²⁵⁸ *Khudobin v. Russia*, Eur. Ct. H. R. (2006); *A.B. v. Russia*, Eur. Ct. H. R. (2011).

²⁵⁹ *Preminyin v. Russia*, Eur. Ct. H. R. (2011).

²⁶⁰ *Id.*

²⁶¹ *Maslova and Nalbandov v. Russia*, Eur. Ct. H. R. (2008).

²⁶² *Id.*

ease with which the authority figure can exploit the victim's relative or complete vulnerability.²⁶³

Insofar as Russia must conform to the ECHR's decisions, it must continue to answer for the maltreatment of all its prisoners, including women. The hope is that the overall structural changes that need to occur in female Russian prison colonies will begin to take root in order to comply with the standards set forth by the European Convention, specifically in Articles 3 and 14. The ECHR case law can provide women with a platform to bring cases against Russia. This, in turn, could encourage Russia to decrease the number of incarcerated people, provide more access to medical resources and sanitary facilities, and prevent overcrowding and physical abuse of women. The ECHR gives the European Convention necessary bite and power, but the ECHR cannot alone mandate that Russia listen to the voices of women, silenced in the far corners of the country's prisons. Rather, incarcerated women in Russia and their advocates can best invoke the mechanisms of the ECHR as one of many tools in a campaign for gender-specific prison reform.

C. Incarcerated Women and Their Advocates Can Use United Nations Treaty Bodies to Encourage Gender-Specific Prison in Russia

The need for prison reform and elimination of violence against women is a consistent theme in the most recent reports and recommendations of the treaty implementing bodies of the United Nations, which review Russia's human rights record. Russia's incarcerated women and their advocates can use U.N. treaties and individual reporting mechanisms to encourage the international community to apply pressure on Russia to meet international human rights standards in its prisons. This strategy of using international human rights law to support reform can provide incarcerated women in Russia the political space to advocate for necessary gender-specific change to the Russian penal code.

In addition to supporting domestic constitutional protection for human rights, the United Nations has several mechanisms for implementing human rights protections in all member states. The United Nations houses a Human Rights Council, an inter-governmental body that reviews and makes recommendations on human rights abuses.²⁶⁴ This body monitors and conducts the Universal Periodic Review of a state's human rights record

²⁶³ *Id.*

²⁶⁴ G.A. Res. 60/251, U.N. Doc. A/RES/60/251 (Apr. 3, 2006), available at http://www2.ohchr.org/english/bodies/hrcouncil/docs/A.RES.60.251_En.pdf.

every four years through an interactive process that allows the state to explain its progress.²⁶⁵ An Advisory Committee serves as the Council's think tank and accepts information from individuals and organizations with complaints against a state for human rights violations.²⁶⁶ Every covenant, binding on the ratifying states, also has a treaty monitoring body that produces reports to show compliance or non-compliance with covenant provisions.²⁶⁷ Through these processes, Russia is made to review and justify or reform its own laws and practices around the incarceration and punishment of its people. With the support of these bodies, human rights organizations and incarcerated women can push Russia to adopt prison reform that specifically addresses the needs of women.

In 2011, the Committee on Economic, Social and Cultural Rights specifically addressed Russia's need to reform its laws and practices around both gender and incarceration.²⁶⁸ It evaluated Russia's compliance with the Covenant on Economic, Social and Cultural Rights, and the Committee recommended that Russia take steps to end corruption and promote gender equality.²⁶⁹ It recommended that Russia review its criminal code and separate criminal sanctions of both imprisonment and compulsory labor for the same crime.²⁷⁰ It urged the state to reduce the number of children living in institutions (prison or otherwise), and to adopt family-based care.²⁷¹

The Committee on the Elimination of Discrimination Against Women, tasked with assessing Russia's compliance to the Covenant on the Elimination of all forms of Discrimination Against Women as of 2010, emphasizes cultural norms that keep women economically disadvantaged in Russian society, and urges Russia to "give priority attention to combating violence against women and girls, and to adopting comprehensive measures to address such violence," including elimination of institutional violence, and comprehensive training for state officials on domestic violence.²⁷² It

²⁶⁵ *United Nations Human Rights Council*, OFFICE OF THE HIGH COMM'R FOR HUMAN RIGHTS, <http://www2.ohchr.org/english/bodies/hrcouncil/> (last visited Apr. 3, 2012).

²⁶⁶ *Id.*

²⁶⁷ *Human Rights Bodies*, OFFICE OF THE HIGH COMM'R FOR HUMAN RIGHTS, <http://www.ohchr.org/EN/HRBodies/Pages/HumanRightsBodies.aspx> (last visited Apr. 3, 2012).

²⁶⁸ U.N. Economic and Social Council, Consideration of reports submitted by States parties under Articles 16 and 17 of the Covenant: Concluding Observations of the Committee on Economic, Social and Cultural Rights, Doc. E/C.12/RUS/CO/5, 43d Sess. (May 20, 2011).

²⁶⁹ *Id.*

²⁷⁰ *Id.*

²⁷¹ *Id.*

²⁷² U.N. Comm. on the Elimination of Discrimination Against Women, Concluding observations of the Committee on the Elimination of Discrimination against Women, Russian Federation Doc. CEDAW/C/USR/CO/7, 46th Sess. (Aug. 16, 2010).

emphasizes a “coherent and multisectoral” approach to a pervasive problem.²⁷³

The most recent review in 2009 of Russia’s compliance with the Covenant on Civil and Political Rights, as reported by the Human Rights Committee, stated concerns about the continuing reports of torture and cruel, inhuman or degrading treatment of prisoners by state authorities.²⁷⁴ Despite the existence of a federal ombudsman in charge of the implementation of human rights, the position has yet to receive the power or the resources to carry out the tasks of his position.²⁷⁵ The Committee recommended implementation of an “independent” human rights monitoring body which would “[ensure] regular, independent, unannounced and unrestricted visits to all places of detention,” and prompt investigation and prosecution of torture, along with proper compensation for victims.²⁷⁶ This would prevent impunity for abusive officials, and could have a direct impact on decreasing incidences of violence for incarcerated women in the Russian system.

While the 2009 report acknowledged Russia’s attempts at decreasing population in overcrowded prisons to meet financial and institutional capacity, the Committee remained concerned about the problem and encourages full compliance with the Covenant, which has not yet been met.²⁷⁷ In the Committee Against Torture’s earlier 2007 report on Russian practices that constitute torture and cruel, inhuman or degrading treatment, the Committee noted Russia’s steps to combat torture, but expressed continued concern that conditions in prisons were poor and overcrowded, there was no legal limit to the time one could be held in pre-trial detention during judicial proceedings, and prisoners received inadequate health care.²⁷⁸ Through the report, the Committee encouraged Russia to implement the previously adopted framework for developing the penitentiary system in order to stem overcrowding and improve overall conditions.²⁷⁹ The Committee also recommended consideration of an independent health

²⁷³ *Id.*

²⁷⁴ U.N. Human Rights Comm., *Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant: Concluding Observations of the Human Rights Committee* (2009), U.N. Doc. CCPR/C/RUS/CO/6, 97th Sess. (Nov. 24, 2009).

²⁷⁵ Rahel Baumgartner & Florian Irminger, *Human Rights Committee: The Russian Federation Needs to Change!*, HUMAN RTS. HOUSE FOUND. (Nov. 16, 2009), <http://humanrightshouse.org/Articles/12454.html>.

²⁷⁶ U.N. Human Rights Comm., *supra* note 274.

²⁷⁷ *Id.*

²⁷⁸ U.N. Comm. Against Torture, *Consideration of Reports Submitted by States Parties Under Article 19 of the Convention: Conclusions and recommendations of the Committee against Torture*, U. N. Doc. CAT/C/RUS/CO/4, 37th Sess. (Feb. 6, 2007).

²⁷⁹ *Id.*

examiner that checks all prisoners upon their detention and release so that serious medical cases and deaths are handled appropriately.²⁸⁰

The recommendations established by treaty monitoring bodies target areas for reform in Russia, and encourage altering laws and policies in order to conform to these recommendations. Adoption of the reform recommended by treaty monitoring bodies into Russia's penal code will further the reform of women's prisons in Russia.

D. Incarcerated Russian Women and Their Advocates Have a Basis in International Law to Pressure Russia to Incorporate Gender-Specific Language into Russia's Penal Code

While incarcerated Russian women and their advocates can use ECHR case law and U.N. conventions and reports to assert their human rights, ultimately change will be most effective if these tools are used to influence domestic law. Russia has been slow to implement the United Nations treaty monitoring bodies' recommended changes, while incarcerated women exposed to harsh conditions and violence in Russian prisons are unlikely to have their cases heard by the ECHR, due to the ECHR's high volume.

To implement effective and positive prison reform, Russia should incorporate gender-specific language into its domestic penal code that reflects international law and follows the U.N. Handbook.²⁸¹ This reform would mandate Russia's compliance with its own constitutional provisions, and international human rights law as expressed by the ECHR and the relevant U.N. conventions. Implementation of gender-specific provisions could include incorporating gender-specific health facilities and adequate medical services for all medical problems including those that only effect women, incorporating vocational training into programming for incarcerated women, and incorporating mandatory training for prison personnel working with women. Prison reform for women in Russia must ultimately come from the Russian people. International human rights law equips incarcerated Russian women and their advocates with the tools necessary to effect this change.

V. CONCLUSION

Women in Russian prisons deserve to inhabit humane, safe, and healthy environments that are free from violence. Such rights are expressed

²⁸⁰ *Id.*

²⁸¹ *See id.*

in the Declaration and promulgated by international covenants and conventions, but have yet to be realized for many of Russia's incarcerated women. Though Russia has implemented prison reform with the goal of reducing incarceration rates, these reforms do not specifically and directly address the needs of incarcerated women in Russia.

By invoking international human rights law, incarcerated women subjected to human rights abuses and their advocates can encourage Russia to implement gender-specific reforms. The European Court of Human Rights and the United Nations treaty monitoring bodies can be utilized by incarcerated women to hold Russia accountable to its international human rights obligations. These mechanisms available under international human rights law place pressure on Russia to comply with human rights norms already incorporated into Russia's Constitution. This pressure will operate to expand the rights of incarcerated women in Russia and prevent further injustice.