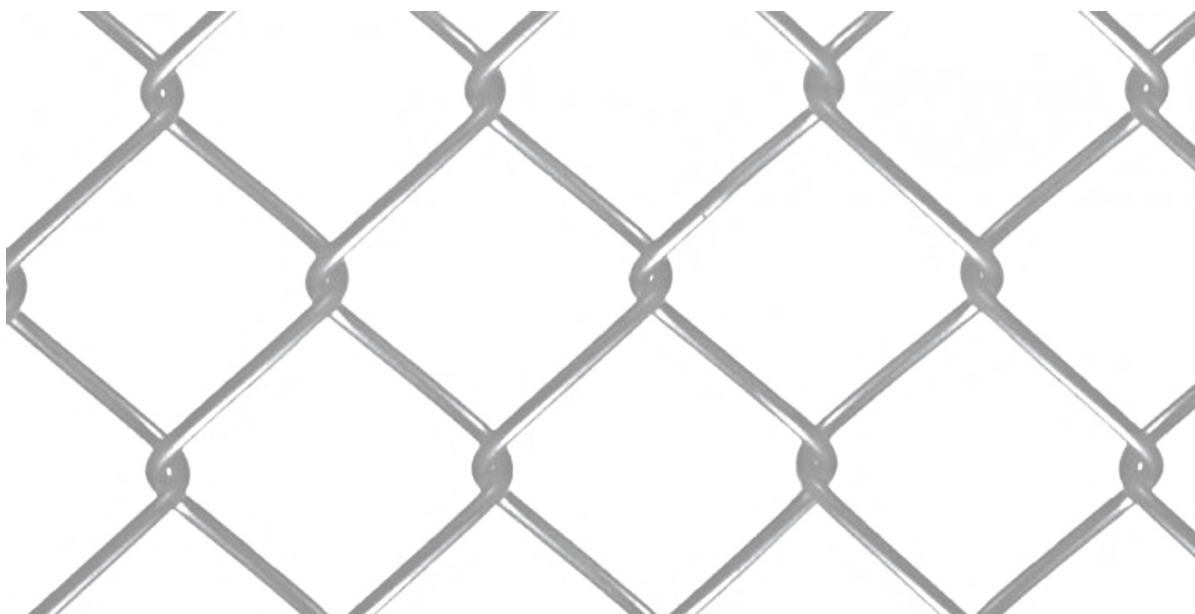


FOREIGN NATIONAL DETENTION CENTERS AND THE FAILURE TO COMPLY WITH EHCR RULINGS ON THE PROTECTION OF MIGRANT RIGHTS



ADC MEMORIAL HUMAN RIGHTS REPORT
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One of the perennial areas of focus of the Anti-Discrimination Centre “Memorial” is the protection of the rights of ethnic minorities and migrants in Russia and other post-Soviet states. ADC Memorial’s reports raise the problem of the violation of the rights of migrants to housing, education, health, work, and social benefits. Our center devotes special attention to imperfections in Russian laws that continue to be one of the main reasons why migrants are so vulnerable from a legal standpoint.

Loopholes in the law, corruption, and complicated procedures for gaining legal status, recovering lost documents, and entering and departing Russia frequently force migrants to seek roundabout and admittedly dangerous paths to legalization.

Under current Russian law, foreign nationals must obtain all their residence and work permits within 30 days of their arrival. However, migrants are rarely able to meet this deadline due to the difficulty of completing this paperwork, extended processing periods for this paperwork, and all the medical commissions, exams, and lines that accompany these procedures. Moreover, foreign nationals who have arrived in Russia have a hard time tracking constant changes in the law (mainly in the direction of tightening), and there is a clear absence of any awareness and outreach work on the part of RF authorities that could prevent violations of migration rules. As a result, many migrants have been forced to rely on unscrupulous middlemen, employers, and even migration officials who offer services to circumvent official legalization procedures. Documents filled out by “middlemen” are frequently invalid and can result in the initiation of an administrative case against their holder (who usually does not know that they are fake). Migrants who have arrived in Russia legally but who have been swept up in raids or security operations (with typical names like “Migrant” and “Illegal”) and are found with these documents are deprived of their status and join the ranks of “illegals” and “violators of the migration regime.”

PLACEMENT IN FOREIGN NATIONAL DETENTION CENTERS

The Federal Migration Service and the police conduct regular raids to uncover violators, i.e. migrants who are missing a “required” document, whether it be a stamp attesting to their on-time departure from Russia, a current work license, or even a medical insurance policy). During these operations, dozens, hundreds, and sometimes even thousands of these “violators” are detained. Later, fines are imposed on them by a court and they are sentenced to administrative expulsion and placed in a Special Institution for the Temporary Detention of Foreign Nationals (SITDFN) for an indefinite period (up to two years from the time a court decision enters into force, but in practice for an even longer period, since, when appealed, the period for a decision to enter into force may increase to anywhere from 10 days to six months). In some cases, these people may even be expelled to their country of citizenship.

Until recently, in violation of procedural norms, throughout the country remand centers, temporary detention facilities, and even drunk tanks (as was the case, for example, in Murmansk Oblast) have performed the functions of these foreign national detention centers, even though these facilities are not meant for this purpose. The conditions of stay in these institutions were as close as they possibly could be to prison conditions and did not meet the standards for holding prisoners in places of detention. Sometimes people who have not committed any crime and are guilty simply of violating migration laws (overstaying a visa, not living at their place of registration, or simply not having a medical policy, none of which are serious violations) spend years languishing in prison.

ADC Memorial and other human rights organizations repeatedly pointed out to the responsible entities that the detention conditions for convicted persons in these kinds of institutions are not compatible with conditions for a long-term stay. Due to procedural ambiguities, foreign nationals and stateless persons were held in conditions that presented a direct threat to their lives and health. As the European Court for Human Rights later indicated, long-term stay in such conditions can be defined as inhuman treatment in accordance with the European Convention on the Protection of Human Rights and Fundamental Freedoms.

It was only in 2013 that special centers for the foreigner nationals awaiting expulsion (first known at SCFN and then, since 2015, as SITDFN) began to be set up in regional centers and cities of federal significance. But

in terms of conditions, these centers are still more similar to prisons than to the family centers they were supposed to be. In fact, they lack any conditions for family life: upon detention, children are separated from their parents. The parents are placed in overcrowded, locked cells in SITDFNs, while children are placed in special children's institutions (like the Tranzit home in Saint Petersburg) or juvenile remand centers, where juveniles are held (for some reason, only minors under the age of 16 from former Soviet republics are sent to these centers; children from other countries are held in Tranzit until the age of 18).

INHUMAN DETENTION CONDITIONS FOR "ILLEGAL" MIGRANTS IN TEMPORARY ISOLATION FACILITIES: ISOLATION, VIOLATION OF SANITARY AND HYGIENIC NORMS, POOR NUTRITION, LACK OF MEDICAL CARE

In 2009, three stateless persons of Roma origin from Ukraine's Zarkapattia Oblast ended up in a temporary detention facility in Saint Petersburg. Their names were Anna Lakatosh, Pavel Gabor, and Aladar Forkosh. They were held for over a year in overcrowded cells. They had no chance for exercise and had to deal with poor ventilation, poor nutrition, and the virtual absence of medical care and personal hygiene items. They lived in a total information void and their cellmates were people sentenced to a specific number of days in isolation for "disorderly conduct" (fights, motor vehicle accidents, brawls).

According to Pavel Gabor, he was taken out for a walk only one time during the year that he spent in the isolation facility. Otherwise, he stayed in a cell where the light was always on, and he slept without a mattress or bedding. He was given water only once a day. The toilet—a hole in the floor—was located right in the cell and was not separated from the main area of the cell, including the prisoners' beds, where they were forced to eat in the absence of tables (there was no dining room or shower room in the facility). They were forced to wash themselves and their clothes in the same cell with cold tap water. Their meals consisted of black bread, kasha, and tea. Their rations included absolutely no fruits, vegetables, fish, meat, or dairy products. At the same time, they were not allowed to prepare their own food or boil water.

Additionally, these prisoners were completely isolated from the outside world: their cells did not have radios or televisions and the use of mobile phones was not permitted. They were not given books or newspapers, and they were never taken out of their locked cells. Meetings were permitted rarely and only with close relatives. There was no offer of legal assistance from the government and lawyer visits only became possible after human rights defenders entered into an agreement with attorneys to protect the rights of their clients.

It was only after five months of imprisonment that human rights defenders and attorney were able to determine that it would be impossible to deport A. Lakatosh, P. Gabor, and A. Forkosh through evidence they obtained confirming that their clients did not have Ukrainian citizenship. The administration of the remand center, however, refused to release these prisoners before they had spent one year in custody (in 2009, the maximum wait for expulsion was one year), despite the senselessness and illegality of keeping people in custody who could not be deported and instead needed to be released and legalized. In this case, the norm that stipulates temporary deprivation of freedom as a means of ensuring expulsion became a way of punishing people guilty only of the fact that no country recognized them as its citizens.

At the time of their release in October 2010, Lakatosh, Gabor, and Forkosh still lacked documents. During the entire year of their detention, Ukrainian and Russian state authorities had not been able to establish either their identities or their citizenship due to their ineffective and insufficient efforts. Even after their release, Lakatosh, Gabor, and Forkosh were still in violation of the migration regime.

The year-long stay in conditions where these prisoners did not receive enough food and were not able to attend to their physical hygiene took a huge toll on their physical and mental health: Anna Lakatosh experienced bouts of epilepsy and Aladar Forkosh fell ill with tuberculosis; they all frequently felt faint from hunger. Over the year of their detention, these prisoners lived in an abject and depressed state. They could not understand what month it was or even what time of the year it was outside. They were separated from their families and did not receive any of the care, protection, or support that is stipulated

in such cases by international law. At the end of their maximum period of custody, Anna Lakatosh, Pavel Gabor, and Aladar Forkosh were released with ruined health and without any hopes or guarantees of avoiding a second imprisonment. Due to their lack of documents, they remain to this day in violation of the regime of stay in any country they happen to be in.¹

LACK OF INTEREST ON THE PART OF THE RELEVANT AGENCIES TO RESOLVE THE QUESTION OF RELEASING STATELESS PERSONS AS PERSONS NOT SUBJECT TO EXPULSION FROM RUSSIA DUE TO THEIR LACK OF A COUNTRY OF CITIZENSHIP

Pursuant to the RF Constitution, detention for an indeterminate period cannot be viewed as a permissible restriction on a person's right to freedom. This means that the authorities responsible for holding foreign nationals and stateless persons in SITDFNs must not only take all possible measures for the speedy return of nationals whose citizenship has been established to their home lands, but also release, without delay, persons whose status cannot be confirmed and provide them with documents. After all, keeping people in prison conditions for an extended period and then releasing onto the street, where they could be detained again, is not just inhuman, but also extremely ineffective. However, migration officials and bailiffs are usually extremely slow to carry out their work and will put off taking any measures to establish a prisoner's identity for a long time. Many migrants have been forced to serve undeserved and harsh punishments just because of the passivity of the competent bodies.

The judicial system lacks effective legal control and mechanisms that would make it possible to stop the execution of a resolution on expulsion should expulsion not be possible and to stop the holding of stateless persons in special institutions. The RF Administrative Offenses Code does not provide for such a mechanism or opportunity.

Numerous attempts by attorneys and human rights defenders to obtain a court decision that would clarify procedures and present a means for executing resolutions in relation to the expulsion of stateless persons in accordance with the norms of the Administrative Offenses Code have not resulted in any progress. In the case of Lakatosh, Gabor, and Forkosh, an application to the court for the place of detention with a request to review the applicants' complaint regarding violation of paragraph 4 of Article 5 of the European Convention in connection with their extended and senseless detention was not accepted by the court for consideration. After all possible means of national protection were exhausted, a complaint was filed with the European Court for Human Rights. The case of Lakatosh and Others v. Russia was considered by this Strasbourg-based court as a matter of priority. The Russian Federation immediately recognized that it had violated the European Convention on the Protection of Human Rights and Fundamental Freedoms by acknowledging that foreign nationals and stateless persons are held in inhuman conditions in temporary detention facilities without any periodic judicial control or the possibility of actually carrying out the expulsion, and undertook to pay compensation in the amount of 30,000 euro to each applicant.² This obligation was met, but there were no fundamental changes made to enforcement practices in 2010 or even within the following five years.

CASE OF KIM V. RUSSIA: FINDING DETENTION PRACTICES AND CONDITIONS IN FOREIGN NATIONAL DETENTION CENTERS INHUMAN AND DEGRADING³

Even though specialized foreign national detention centers began to appear in 2013, complaints from prisoners in the old foreign national detention centers regarding continuing inhuman treatment and

¹ Materials and documents on the case Lakatos and others v. Russia: http://adcmemorial.org/wp-content/uploads/lakatosh_sajt.pdf

² Ibid.

³ <http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{{fulltext}}:{{Kim v.Russia}},itemid:{{001-145584}}>

intolerable detention conditions continued to be received. Russian courts kept ignoring these complaints, which led to the filing of a new complaint with the ECHR, this time from Roman Anatolyevich Kim, another stateless person.

On June 9, 2011, Roman Kim was detained by police officers for not having identity documents. On July 19, 2011, a court issued a resolution finding Kim guilty of violating his regime of stay in Russia and subjecting him to punishment in the form of a 2,000 ruble fine and expulsion from Russia. Prior to his expulsion (and without any indication of the date of its execution), Kim was placed in a foreign national detention center in Saint Petersburg, where he spent over two years. Not one response was received from any agency (Directorate of the Federal Migration Service, Directorate of the Federal Bailiff Service, Foreign National Detention Center) to the numerous requests made by Kim's attorney regarding measures taken for his expulsion. It was only after Kim had been held in the detention center for five months that the Directorate of the Federal Migration Service sent a query to the embassy of the Republic of Uzbekistan, a citizen of which Kim was presumed to be. A response was received that it would not be possible to admit Kim into Uzbekistan in light of the fact that he was not a citizen of this country. Even though it was not possible to expel Kim, courts refused to consider this complaint, which was filed with account for new facts, and Kim continued to be held in custody in the absence of any legal grounds for this and without any prospect of expulsion.

In its judgment in the case *Kim v. Russia*, the European Court for Human Rights acknowledged the practice of the absence of judicial control over the detention periods of migrants and found the conditions of stay in such centers to be inhuman and degrading, in violation of Article 3 and paragraph 4 of Article 5 of the European Convention on the Protection of Human Rights and Fundamental Freedoms. In acknowledging the violation of Article 3 of the European Convention, Russia also confirmed that detention conditions in the Saint Petersburg detention center for aliens did not correspond to the guarantees in Article 3 of the Convention: Kim complained of overcrowding, lack of walks, meager food portions, lack of access to drinking water in his cell, a ban on the use of a telephone, and the short length of meetings with relatives, which could only take place with the permission of an inspector.

Of equal importance is the Court's recognition of the violation of paragraph 4 of Article 5 of the Convention, i.e. the systemic problem of the lack of periodic judicial control over the actual holding of people in custody and the absence of the procedural ability to appeal detention in a center after a certain period of time or when that person's status or situation changes, which makes it impossible to end custody, even if expulsion is not possible, as in the case of prisoners who are stateless persons.

In its judgment, the ECHR demanded that Russia take general measures to improve the situation in relation to prisoners at SITDFNs, which would mean: changing laws and creating opportunities for periodic judicial control over the terms of custody for migrants accused of violating the regime of stay in Russia; creating mechanisms for cancelling resolutions on placement in a SITDFN and expulsion, or release when expulsion is not possible; and, of course, improving detention conditions.

FAILURE TO EXECUTE DECISIONS IN WHOLE AND INDIVIDUAL POSITIVE CHANGES IN ENFORCEMENT PRACTICES

It has been over one year since the ECHR judgment in the case *Kim v. Russia* was issued. The decision in its totality has unfortunately not been implemented, but there are some changes for the better. For example, in Saint Petersburg, bailiffs who handled expulsions have, at their own initiative, started filing with courts applications to terminate expulsion enforcement proceedings for stateless persons in connection with the fact that not one country will accept the applicant. This practice has yet to spread to other cities in Russia, which is apparently because it was the Saint Petersburg SITDFN that was mentioned in the ECHR judgment, but it is clear that measures to refuse to hold stateless persons in custody must be adopted in similar institutions.

At the same time, courts have started issuing more decisions to cancel expulsion procedures for stateless persons and release the applicants. However, courts are not adopting decisions granting stateless persons the legal right to remain in Russia (meaning, providing documents that will allow a person to live and work in Russia, such as a residence permit for stateless persons; even in relation to Roman Kim the ECHR's judgment to provide him with the necessary documents for his legal stay in Russia has yet to be implemented). Courts are simply changing decisions on expulsion to

self-controlled departure, without stipulating where and how a stateless person may depart. It goes without saying that it would be impossible to depart without valid documents and enter another country without the right to do this.

What's worse, in requiring stateless persons to leave the Russian Federation on their own, what the courts are actually doing is pushing them into committing a criminal offense. A stateless person who does not have valid documents establishing his identity and connecting him to a specific country does not have the right to cross of state border of the Russian Federation. For stateless persons, a violation of this rule entails the risk of criminal prosecution in accordance with Article 322 of the RF Criminal Code, which stipulates deprivation of freedom for a period of up to two years.

By not executing a court resolution on independent departure from Russia, stateless people are committing an administrative violation in accordance with part 3 of Article 20.25 of the RF Administrative Offences Code, which entails another placement in a SITDFN for an extended period. Thus, within the current system of legal norms, it is not possible for stateless persons to avoid breaking the law.

In 2014, the system of specialized institutions for the temporary detention of foreign nationals (SITDFN) replaced regional detention centers in all 83 RF constituent entities. On February 12, 2015, amendments were adopted to the federal law "On Public Monitoring of the Protection of Human Rights in Places of Detention and Assistance to Persons Located in Places of Detention." Under these amendments, public watchdog commissions gained the right to visit and monitor compliance with the rights of foreign nationals in SITDFNs. Prior to the adoption of these amendments, only attorneys and representatives from the office of the human rights commissioner could visit these institutions, which were not accessible for public monitoring. Nevertheless, in 2015 the requests of representatives from public watchdog commissions to visit prisoners at SITDFNs were repeatedly refused.

Almost immediately after the amendments to the law "On Public Monitoring" entered into force, public monitors tried to enter the Saint Petersburg SITDFN, but they were denied entry. The administration of the SITDFN ignored requests to allow members of watchdog commissions into the institution. Subsequent attempts to enter the SITDFN also yielded no results. To a question posed by members of a public watchdog commission to Elena Dunayeva, the head of the Directorate of the Federal Migration Service for Saint Petersburg and Leningrad Oblast, as to why her subordinates prevented monitoring, they received the answer "I don't recommend that you visit SITDFNs."⁴

This unresolved problem remains, along with the absence of clearly-specified norms and detention conditions in laws on foreign national detention centers. Almost immediately after new normative legal acts entered into force, the monitoring of temporary detention institutions showed that the legal norms were still not being fulfilled. As before, detention conditions leave much to be desired and supervisors and personnel at these institutions continue to make arbitrary decisions that clearly exceed their official powers. According to surveyed prisoners in SITDFNs, they are forced to obey "unwritten" rules that they learn about from "floor wardens" who cite the oral instructions of the administration. These rules change unpredictably on a regular basis and there is no mechanism for their appeal.

For example, a prisoner in the Saint Petersburg SITDFN who had been awaiting deportation from April 18, 2014 through August 29, 2014 complained that he was held in an isolation cell for four months. He even stated that from April 18 to April 20, he was kept in handcuffs in the "glass" (a small area with an iron door) and did not have access to water or a bathroom and was not able to sit or lie down. Other people held in SITDFNs described similar abuse.⁵

Another former prisoner at the Saint Petersburg SITDFN complained to his attorney that officials there forced him to say that he was a citizen of Azerbaijan, even though he never had been a citizen of this country and had never even set foot in it. For refusing to acknowledge Azerbaijani citizenship, he was transferred to a "cell for people who have violated the regime of stay in a SITDFN" (which basically amounted to solitary confinement), where the detention conditions were even worse than in other areas: he was not allowed to leave his cell, there was not enough light, the toilet was in the cell, and there

⁴ Report of social watchdog commissions(ONC): <http://gulagu.net/profile/4118/blog/5486.html>

⁵ From the archives of ADC "Memorial"

was a terrible stench. Other illegal “punishments” for this prisoner including depriving him of the right to receive packages and meet with his common law wife, who on that very same day had been crudely expelled from the SITDFN and prohibited from seeing her husband.⁶

As a rule, people held in a SITDFN are not able to make timely reports about the violation of their rights, which forces them to take extreme measures. On February 8, 2015, eight prisoners in the Moscow SITDFN attempted mass suicide by cutting the veins in their hands and other parts of their bodies as a sign of protest against the violence and torture applied to them by personnel at this institution.⁷

On May 14, 2015, prisoners at the Ekaterinburg SITDFN caused mass unrest. As human rights defenders later learned, beatings and torture took place at this institution. For no reason whatsoever, OMON officers would go to the floors where foreign nationals were being held and beat the prisoners.⁸

CONCLUSIONS AND RECOMMENDATIONS

The problems connected with insufficient financing, poorly equipped facilities, poor food standards, and the lack of adequate space that are frequently covered up by officials do not justify the inhuman treatment of persons held in these institutions. Officials from SITDFNs, the Federal Bailiff Service, the Directorate of the Federal Migration Service, and other special services should be guided in their activities by the requirements of laws and the international obligations of the Russian Federation to observe human rights regardless of a person’s nationality or legal status.

While we welcome the measures taken by law enforcement agencies to improve the situation of foreign nationals and stateless persons held in SITDFNs, we continue to insist on the need to provide foreign nationals and stateless persons with access to actual judicial protection within the framework of current Russian and international law.

Pursuant to the ECHR’s judgment in the case of *Kim v. Russia*, Russian authorities must take urgent general measures to improve detention conditions at SITDFNs and introduce judicial control over periods of detention.

To avoid holding people in custody for an extended period of time without a valid reason, periodic judicial control over the deadlines for executing a resolution on expulsion and the legality of detention in a SITDFN must be specified in the law (by analogy with articles 108 – 109 of the RF Criminal Procedural Code), and there must be a sharp reduction in periods for executing resolutions on expulsion and, accordingly, detention in SITDFNs, during which the competent authorities must establish the identity of the people in custody and create documentation for them.

As an example, the following regulation is possible: a detained person is placed in a SITDFN under a court decision, and not “until expulsion,” but for a period of two months during which the competent authorities must perform all the actions necessary for creating their documentation. If this process is not completed within two months, the court must again decide to extend the period of detention for another two months or release the detained person due to the impossibility of establishing citizenship or the insufficiency of measures taken in this regard. The maximum period of detention would be set at six months (instead of the current two years) and the need to extend this period would be considered by a court every two months. It would also be necessary to require officials authorized to create documentation to apply to a court on their own with a petition to release people in custody in cases where they have established that expulsion is not possible.

It will be necessary to create the procedural ability to terminate execution of a resolution on deportation and release the detained person, including at this person’s own petition, if it is not possible to carry out the expulsion or there are other humanitarian reasons or new circumstances (lack of

⁶ From the archives of ADC “Memorial”

⁷ Report of social watchdog commissions(ONC): <http://an-babushkin.livejournal.com/264608.html>

⁸ Interview with Yekaterinburg social watchdog commissions(ONC): <http://www.youtube.com/watch?v=DmVYOeWPU9c>

citizenship or the right to enter another country, state of health, military actions, a natural disaster, granting of asylum in the RF, etc.).

It will be necessary to introduce a legal norm that upon the release of stateless persons who cannot be expelled to another country or persons not subject to expulsion for other reasons, these people must be issued documents that would allow them to remain in Russia legally (for example, a residence permit for stateless persons or temporary asylum).

It will be necessary to introduce a legal norm that people held in a SITDFN must be provided with the free legal assistance of an attorney from the time they are detained until their expulsion from the country, release from the SITDFN, or, in the case of release without the termination of administrative prosecution, until the end of the administrative case, while people who are released due to the impossibility of expulsion must also be provided with free legal assistance when they apply for permits for their legal stay in the RF.

It will be necessary to stop placing pregnant women, the mothers of young children, the elderly, sick people, and disabled people in SITDFNs in accordance with the norms of administrative detention established by the RF Administrative Offenses Code. Children, including those over the age of 16 should not be separated from their parents and placed in remand centers or orphanages. Living conditions must be created in SITDFNs for detained people who are married.

It will be necessary to ensure that social watchdog commissions and other interested persons like relatives, friends, journalists, volunteers, human rights defenders, ombudsmen, lawyers, and attorneys are not prevented from visiting people held in SITDFNs. Rooms for meetings and appointments will have to be furnished so that people can meet there comfortably, and these rooms should have a corner for children in case prisoners are visited by their children. Conditions for extended meetings must be created for visits from relatives.

RF authorities must take urgent measures to improve detention conditions in SITDFNs. Specifically, they must:

- end the practice of the arbitrary application of punishment for breaches of discipline. Bar the use of isolation cells and other forms of punishment and penalties against people held in SITDFNs;

- ensure that prisoners have a connection with the outside world: allow them to use landlines and mobile phones, ensure that they have the opportunity to watch television and listen to the radio, create a free internet station, offer them the chance to file appeals in written form by mail or online, ensure that they can correspond freely;

- bar solitary confinement and confinement in locked cells (people should be able to walk out into the hallway or take a walk in the courtyard when they want); create conditions for unlimited walks and conversation, both during walks and at other times;

- arrange for high-quality and timely medical care that includes the possibility of hospitalization (increase the number of personnel in the medical section of the SITDFN or enter into agreements with outside organizations to service the SITDFN); arrange for pharmacies;

- create the opportunity for the unobstructed use of the shower and laundry room, provide prisoners with all the necessary hygienic supplies, including soap, laundry detergent, clean linens, changes of clothes, shaving and hair cutting items, toilet paper, feminine hygiene items, warm clothing;

 - set up stores in SITDFNs selling essential items, personal hygiene items, and food products;

 - improve nutrition, include fruits and vegetables in the diet;

 - organize leisure activities for prisoners: create conditions for exercising (equipment, space, gear); set up libraries;

 - create paid job opportunities (for example, open production shops in SITDFNs).