



European
Network on
Statelessness

**Anti-Discrimination Centre Memorial
Institute on Statelessness and Inclusion
European Network on Statelessness**

Joint Submission to the **Human Rights** Council
at the 30th Session of the
Universal Periodic Review

(Third Cycle, May 2018)

Russian Federation

5 October 2017

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Introduction

1. Anti-Discrimination Centre (ADC) Memorial,¹ the Institute on Statelessness and Inclusion (ISI),² and the European Network on Statelessness (ENS)³ make this joint submission in relation to human rights and statelessness in the Russian Federation (RF) in general and, in particular, to the detention of stateless persons and migrants deemed to have violated migration rules.

The Universal Periodic Review of the Russian Federation under the Second Cycle

2. Russia was subject to the UPR for a second time in 2013 during the Sixteenth Session of the Second Cycle. During this review, Russia supported/noted the recommendations by Argentina 140.21 to “*Consider the possibility of ratifying ... the Conventions on Statelessness*” and by Austria 140.14 to “*Ratify ... the Conventions regarding stateless persons ...*”. Russia also supported the recommendation by Kazakhstan 140.132 to “*Apply positive measures in order to ensure appropriate conditions for persons in detention, with involvement of public monitoring commissions*”; and by Jordan 140.133. to “*Take positive measures towards guaranteeing appropriate conditions for people in detention including involvement of the system of public observer commissions that monitor penitentiary institutions*”.⁴

¹ Anti-Discrimination Centre (ADC) Memorial is a Human Rights NGO defending the rights of vulnerable groups (such as representatives of ethnic minorities and indigenous peoples, migrants, stateless persons, LGBTI persons and others) in Eastern Europe and Central Asia, through national and international advocacy, strategic litigation and education/information work. A number of strategic cases relevant to statelessness were won with the financial support and expertise of ADC Memorial; among them the ECHR case “Kim vs Russia” (2014) and the case of Noe Mskhiladze in the Constitutional Court of the Russian Federation (2017). ADC Memorial has prepared a number of analytical Human Rights reports on the problem of statelessness and raised this issue in alternative reports to UN Treaty Bodies. ADC Memorial is a member of the European Network of Statelessness. For more information about the work of ADC Memorial, please visit its website: www.adcmemorial.org

² ISI is an independent non-profit organisation committed to an integrated, human rights based response to the injustice of statelessness and exclusion through a combination of research, education, partnerships and advocacy. Established in August 2014, it is the first and only global centre committed to promoting the human rights of stateless persons and ending statelessness. Over the past two years, the Institute has made over 20 country specific UPR submissions on the human rights of stateless persons, and also compiled summaries of the key human rights challenges related to statelessness in all countries under review under the 23rd to the 28th UPR Sessions. For more information on the Institute’s UPR advocacy, see <http://www.statelessnessandhumanrights.org/upr-universal-periodic-review/resources-database>.

³ The European Network on Statelessness (ENS) is a civil society alliance of NGOs, lawyers, academics, and other independent experts committed to addressing statelessness in Europe. Based in London, it currently has over 100 members in 40 European countries. ENS organises its work around three pillars – law and policy, communications and capacity-building. The Network provides expert advice and support to a range of stakeholders, including governments. For more information about ENS, please visit its website: www.statelessness.eu

⁴ Universal Periodic Review. Russian Federation. <http://www.ohchr.org/EN/HRBodies/UPR/Pages/RUIndex.aspx>. Matrix of Recommendations. 2013.

The International Obligations of the Russian Federation

3. The RF is a party to core UN Human Rights treaties that include provisions related to statelessness and/or nationality, such as the Convention on the Elimination of All Forms of Racial Discrimination (CERD, 1965), the International Covenant on Civil and Political Rights (ICCPR, 1966), The International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, 1979), the Convention on the Rights of the Child (1989). In addition to guarantees of the right to nationality, both the ICCPR and CRC contain provisions that oblige Russia to ensure the *timely* birth registration of *every* child *immediately* after birth. Within the Council of Europe, Russia ratified (1998) the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) (1950); ratified (1998) the Framework Convention on the Rights of National Minorities (1995); and partly ratified (2009) the European Social Charter (1961).⁵
4. Russia has additional international and regional obligations to protect the liberty and security of all persons (including stateless persons) and to protect against arbitrary and unlawful detention. These obligations derive primarily from the ICCPR (Article 9) and ECHR (Article 5).
5. Russia has not yet ratified the Convention relating to the Status of Stateless Persons (1954), the Convention on the Reduction of Statelessness (1961), or the Council of Europe Convention on the Avoidance of Statelessness in Relation to State Succession (2006). It has signed but not ratified the European Convention on Nationality (1997).
6. Among the important recent recommendations made to Russia by UN Treaty Bodies, the UN CERD (93rd session, 2017) recommended:

*“that the State party take urgent measures to expedite the registration of all those seeking registration in a transparent manner. The Committee also recommends that the State party take measures to bring to an end any discriminatory or arbitrary behaviour by officials involved in registration activities. Moreover, the State party is requested to guarantee that the enjoyment of rights by all individuals in the Russian Federation is not dependent on residence registration. Finally, the State party is encouraged to accede to the 1954 Convention relating to the Status of Stateless persons and the 1961 Convention on the Reduction of Statelessness”.*⁶

7. The UN CEDAW in 2015 also urged the RF:

*“to ensure that undocumented migrant women, in particular pregnant women and women with small children, receive adequate assistance, are not subjected to prolonged administrative detention and benefit from integration policies and family reunification measures”.*⁷

8. The 2014 European Court of Human Rights (ECtHR) judgment on the case “Kim vs Russia” found the Russian Federation to be in violation of Articles 3 (inhuman detention conditions), 5.1 (extended detention without the prospect of expulsion, lack of periodic judicial oversight of detention terms), and 5.4 (violation of the rights of prisoners of Centres for Temporary Detention of Foreign Nationals - CTDfNs to appeal and to judicial oversight over the legitimacy and length of detention) of the ECHR. The ECtHR obligated Russia to adopt measures of a general nature to correct this situation in order to prevent similar violations in the future.

⁵ See this table of provisions of the Social Charter that were accepted by Russia - <http://www.coe.int/en/web/turin-european-social-charter/the-russian-federation-and-the-european-social-charter>

⁶ UN CERD. Concluding observations on the 23 and 24 periodic reports of the Russian Federation. 93rd session of the UN CERD. 2017. http://tbinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=1110&Lang=en

⁷ UN CEDAW. Concluding observations on the 8th periodic report of the Russian Federation. 62nd session of the UN CEDAW. 2015. http://tbinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=970&Lang=en

9. Such measures should include amending laws to eliminate violations of the rights of people held in CTDFNs (ensuring oversight of terms and the legitimacy of placement in a CTDFN, improving detention conditions) and to prevent stateless persons from ending up in these facilities (creating an effective procedure for providing legal status to stateless persons, including persons who have not been able to acquire legal status over the course of decades).
10. Russia's implementation of the measures prescribed in the ECtHR judgment could bring significant improvement to the lives not just of stateless persons like Roman Kim, but also of foreign nationals in CTDFNs, since they also suffer from extended detention in inhuman conditions and cannot challenge this violation of their rights on their own or with the help of professional attorneys due to deprivation of any connection with the outside world.
11. However, the Russian Government has unfortunately not yet adopted any of these measures to implement the ECtHR judgment in relation to stateless persons and other detainees in CTDFNs.

Statelessness in Russia

12. It is always challenging to have comprehensive statistics on statelessness – due to the hidden nature of the problem. However, it is evident that Russia has an extremely large stateless population. According to the 2010 census, over 178,000 people⁸ identified themselves as being stateless. The 2017 UNHCR Global Trends Report estimated the stateless population in Russia at the end of 2016 to be 90,771.⁹ However, it is likely that the actual number of stateless persons in Russia is greater than this.
13. The main cause of statelessness in contemporary Russia is the collapse of the Soviet Union in 1991. Even though locally-registered residents are usually granted citizenship in the successor states, many former Soviet citizens did not “automatically” exchange their Soviet passports for new ones and become citizens of their new states. In fact, invalid Soviet passports are still the only document that thousands of people have.
14. RF citizenship laws, like citizenship laws in other former Soviet countries, have been amended many times. Law No. 1948-I “On RF Citizenship” of 28 November 1991 envisaged an expedited registration procedure requiring only a petition for former Soviet citizens to obtain RF citizenship, and set a timeframe for registering citizenship (a three-year period, which was later extended to 31 December 2000). In 2002 Federal Law No. 62-FZ “On Citizenship of the Russian Federation” entered into force. This law basically equated stateless persons who were former Soviet citizens with “regular” foreigners; the only concessions they received under the so-called expedited naturalisation procedure was a shorter residence period. Meanwhile the overall three-step process for becoming a citizen remained the same as the “general procedure.” Finally, in 2012 Chapter VIII.1 was added to this law. This chapter was designed to regulate, over the next five years (till January 1, 2017), the situation of stateless persons, who have long been unable to acquire legal status. In 2016, as the problem of regularisation of such people was not fully solved, the formal opportunity to obtain Russian citizenship for “irregular” former citizens of the USSR was prolonged until January 1, 2020. According to official statistics, between 2012 and November 2016, more than 45 000 people (of an estimated 70,000) benefitted from this change. (from more than 70 000 whom it concerned).¹⁰

⁸ The All-Russia Census. 2010. Volume 4. Ethnic structure, language competence, citizenship. (In Russian)

http://www.gks.ru/free_doc/new_site/perepis2010/croc/perepis_itogi1612.htm

⁹ UNHCR. Global Trends. Forced Displacement in 2016, available at: <http://www.unhcr.org/5943e8a34.pdf>. See Annex 7 for the statelessness figures by country.

¹⁰ Legislation initiative “On prolongation of the time of action of Chapter VIII.1 of the Federal Law “On citizenship of the Russian Federation”. Submitted by the State Duma Deputy Konstantin Zatulin on 2.11.2016. Came into force 19.12.2016. Website of K.Zatulin: <https://zatulin.ru/prodlenie-sroka-dejstviya-glavy-viii-1-federalnogo-zakona-o-grazhdanstve-rossijskoj-federacii.html>

15. Discrimination against stateless persons has become entrenched in all spheres of public life in Russia. All stateless persons experience difficulties exercising their rights due to their lack of citizenship and, accordingly, valid identity documents. Without these, it is virtually impossible to document ownership, register a marriage, be legally employed, or get medical insurance. Moreover, since they do not have these documents, they are viewed as violators of current migration laws and the Code of Administrative Offences. In other words, the law perceives them as 'illegal immigrants' even though they have lived their entire lives in Russia. Despite constitutional and treaty provisions which guarantee equality, non-discrimination and the enjoyment of human rights, in practice, government authorities are not guided by these constitutional and treaty protections of human rights and freedoms. They instead draw on various subordinate acts and formal requirements, which discriminate against stateless persons and restrict their access to basic human rights.
16. In some cases discrimination against stateless persons is aggravated by the factor of ethnicity. For example, creating barriers to accessing personal documents is a form of structural discrimination against Roma in ex-Soviet countries. The peoples repressed during Soviet times have become more vulnerable to discrimination in the post-Soviet period in terms of access to citizenship and passports. These include peoples of the Crimea (Crimean Tatars and others) and the Caucasus (Chechens, Ingush, Balkars, Karachai, Ahiska (or Meskhetian Turks), Hemshin, Kurmanjis (Batumi Turks)), as well as Koreans, Greeks, so called Russian Germans and others. Many persons from these groups were deported from their places of residence to Soviet Republics that became independent states after the breakup of the Soviet Union (Uzbekistan, Kyrgyzstan, Kazakhstan).¹¹
17. Ahiska Turks (known also as Meskhetian Turks), who were citizens of the Soviet Union, are a group who en masse have been denied legal status for decades. The Ahiska moved to South Russia after the collapse of the Soviet Union and pogroms against them in Fergana (Uzbekistan). They have faced serious challenges in obtaining documents recognising their right to live and work legally in Russia.¹² The situation is aggravated due to interethnic tensions, xenophobia and aggression by Kazak nationalist organisations. There are reports of segregation of Ahiska children in schools and the denial of freedom to practice their religion (Ahiska are Sunni Muslims) by the local administration, special services and Kazak organisations. Civil and Human Rights NGOs and activists who try to defend the rights of Ahiska are persecuted by the state.¹³

The Lack of an Effective Regularisation Procedure for Stateless Persons in Russia

18. A key problem for stateless persons (ex-USSR citizens) living in the Russian Federation remains their inability to participate in the legalisation process. Current RF laws on the possibilities for and paths to legalisation (the Federal law "On the citizenship of the Russian Federation, Chapter VIII.1, Articles 13 and 14) categorise stateless persons who are former Soviet citizens into two groups depending on when they entered Russia or when they received an RF passport that was later found to be illegally issued. This refers to many people who, between 1992 and 2002, after following legal processes received RF passports, which were later found to be have been issued illegally (as of the end of 2011, there were

¹¹ Stalin's Deportations. 1928-1953. Database of the Aleksandr Yakovlev Fund. (In Russian)

<http://www.alexanderyakovlev.org/fond/issues/62150>

¹² Around 80 000-100 000 Ahiska live in Rostov Oblast, Kabardino-Balkaria, Karachaevo-Cherkesia, Kalmykia and other parts of the South Federal Okrug of Russia.

¹³ The Life without Right: The situation of Ahiska Turks in the South of Russia in 2015. Report by Moscow Helsinki Group and SOVA Center for Information and Analysis (2015). http://mhg-main.org/sites/default/files/files/akhyska_report_2015.pdf

80,000 such passports). Paradoxically, these passports confirmed the owner's identity, but not his or her RF citizenship.¹⁴

19. Those stateless persons who entered Russia before 1 November 2002, or received a "wrong" passport before 1 July 2002, have the theoretical opportunity to join the procedure of legalisation and are even granted "preferential conditions" (by law, they have the right to bypass the temporary and permanent residence stages and apply for citizenship right away). The law also acknowledges that stateless persons in these categories may not have an identity document, and the procedure for establishing identity is mentioned. At the same time, administrative prosecution of any stateless person applying for citizenship is prohibited, even if that person has violated "immigration rules."¹⁵
20. In reality, though, stateless persons lacking identity documents encounter difficulties: migration authorities either do not conduct the procedure for establishing identity (and prosecute the applicant for an immigration offence), or prolong this procedure for an indeterminate period. The procedure for establishing the identity of a stateless person is also flawed because it does not envisage a specific identity document for stateless persons; the practice is to issue a temporary identity document for an RF citizen, on which the words 'RF citizen' are crossed out. The validity of this document is established arbitrarily (from one to six months), and stateless persons who request that the validity period be increased are rejected.¹⁶ The burden of proof lies with the stateless person, who often cannot prove that they don't have citizenship of another country (the officials of respective countries don't respond to requests). Furthermore, stateless applicants are frequently rejected by migration authorities on the basis that they do not have documents confirming their arrival and residence in the RF.
21. The "preferential" procedure is not envisaged for former Soviet citizens who arrived in Russia after 1 November 2002 or who received an RF passport, later determined to be illegal, after 1 July 2002. They are subject to a general three stage procedure for naturalisation:
 1. application for a temporary residence permit;
 2. application for permanent residence after one year of temporary residence and upon confirmation of a legal source of income and place of stay; and
 3. application for citizenship after five years of permanent residence without leaving Russia (under the general procedure), or immediately after receiving the permanent residence (under the expedited procedure).

In other words, despite their long-term residence in Russia, they must apply for citizenship in the same way a migrant would. This means in practice that such people find themselves outside of any legalisation procedure: they cannot even start the legalisation procedure and are rejected during the very first stage when they try to submit documents for temporary residence. Among the required mandatory documents that usually cannot be provided by stateless persons are: a valid identity document and former or current citizenship (a Soviet passport is not recognised as valid in practice); proof of a legal source of income (it is impossible to work, to be registered at the place of living or buy a property officially without valid personal documents); and proof of legality of stay in the RF (valid documents on crossing the border – migration cards introduced in November 2002). In other words, this procedure is mainly intended for "new" migrants and not for stateless people who have lived in Russia for decades.

¹⁴ Chapter VIII.1 of the law "On RF Citizenship" cancelled out the negative consequence of the Federal Migration Service (FMS) mistakes for the holders of these passports and opened the path to legalisation for these people (some sources even refer to this additional Chapter as "passport amnesty"). The history of protecting the rights of holders of "illegal" passports is set forth in greater detail in the Report of the RF Human Rights Ombudsman V.P. Lukin for 2012 <http://rg.ru/2013/03/29/lukin-dok.html>, as well as in his earlier special report "On the Practice of Confiscating Russian Passports from Former Soviet Citizens who Moved to the Russian Federation from CIS Countries" (2007) <http://rg.ru/2008/01/26/pasporta-doklad.html> (both reports in Russian).

¹⁵ Article 41.1.5 of Chapter VIII.1

¹⁶ This information was received from attorneys working on the cases of stateless persons. ADC Memorial archives

Children born to Stateless Persons

22. Children born to stateless former USSR citizens usually have birth certificates issued in Russia, but they face difficulties accessing rights and services connected to registration and citizenship (for example, healthcare and education). They can generally access primary school, but access to secondary school or state exam certification for children over 14 years old (passport age in Russia) is problematic as a passport is obligatory for all official procedures. College or university education is impossible. At the age of 16, administrative responsibility can be applied and they may be deemed to be “violators of migration rules”.
23. It must be noted in this regard, that Russia has obligations under Article 7 of the Convention on the Rights of the Child to respect every child’s right to acquire a nationality and to

“ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.”¹⁷

The Deprivation of Nationality

24. In 2017, following a change in legislation,¹⁸ it became possible to deprive citizenship of naturalised Russian citizens, who are convicted of extremist and terrorism-related crimes. While raising concern about deprivation of nationality as a punishment, it must be noted that this new provision is only applicable to those who have another citizenship or have guarantees of obtaining one. However, According to UNHCR Guidance:

An individual’s nationality ... is neither a historic nor a predictive exercise. The question to be answered is whether, at the point of making an Article 1(1) determination, an individual is a national of the country or countries in question. Therefore, if an individual is partway through a process for acquiring nationality but those procedures are yet to be completed, he or she cannot be considered as a national for the purposes of Article 1(1) of the 1954 Convention.¹⁹

This provision can therefore create a new group at risk of statelessness in Russia, particularly as the likelihood of receiving a new citizenship once convicted as a terrorist is low. It is too soon to know how the new law will be implemented, but even before it came into force, in April 2017, three young men accused (but not yet convicted) of committing a terrorist attack in St. Petersburg were deprived of Russian citizenship on the grounds of “false information provided by the applicants” to Russian migration authorities.²⁰

The Expulsion and Detention of Stateless Persons

25. Stateless persons are considered to be “foreign nationals” in laws regulating expulsion/deportation from the RF. Since stateless persons are considered to be “illegally staying in the RF” from the standpoint of the law and practice, expulsion/deportation rulings are issued even though there is nowhere to expel/deport them. The set phrase “foreign nationals and stateless persons” is repeated in many laws,

¹⁷ Article 7.1 of the Convention on the Rights of the Child

¹⁸ Federal Law N 243-FZ (29.07.2017) that amended the laws “On citizenship of the Russian Federation” and “On legal situation of foreign citizens”.

¹⁹ UN High Commissioner for Refugees (UNHCR), *Handbook on Protection of Stateless Persons*, 30 June 2014, available at: <http://www.refworld.org/docid/53b676aa4.html>, Para 50.

²⁰ All three are ethnic Uzbeks from Kyrgyzstan, who received Russian citizenship in 2009-2010.

bylaws and official documents related to expulsion where these two different categories of people are viewed as a single unit.²¹

26. To ensure expulsion, stateless persons are confined in CTDFNs – specialised institutions for detention “until expulsion.” There is no judicial oversight of the detention period or the legitimacy of detention (even though courts have regular oversight over pretrial detention in criminal cases). The law sets out two years for executing an expulsion ruling; after which, persons who could not be removed are released from the CTDFN, but are not issued any documents that would allow them to live legally in the RF. Therefore, many stateless persons end up being detained repeatedly for “violating the migration regime.”
27. It is important to note that a two-year maximum detention period is higher than the practice in most European countries. Furthermore, the likelihood of released detainees being detained again, makes this even more problematic.²²
28. When expulsion orders are appealed on the basis that they cannot be executed, the courts of higher instance often prescribe the replacement of expulsion with “controlled self-departure” from the RF. At first glance, these decisions appear to favour stateless persons (a judge agrees that expulsion cannot be executed and understands that the detention does not have a legal and achievable goal, which effectively means that the stateless person is released from the CTDFN). However, the court is actually obliging the stateless person to commit the crime of leaving Russia without valid documents (Article 322 of the RF Criminal Code “illegal crossing of a state border”). This practice perpetuates the irregularity of stateless persons, and can heighten their vulnerability to detention and expulsion in the country they travel to.
29. In 2017, ADC Memorial won a case in the RF Constitutional Court which found that the denial of the right to appeal against administrative decisions to detain stateless persons in specialised institutions for the purposes of administrative expulsion, to be unconstitutional.²³ The Constitutional Court ruled that “Federal legislators should amend the Code of Administrative Offences so that it ensures reasonable judicial control over the timeframes of the detention of stateless persons subject to forced expulsion in specialized institutions.”²⁴ The RF government has subsequently made assurances that amendments to the Code of Administrative Offenses intended to regulate the terms and procedures for appealing placement in a SITDFN will be submitted to the State Duma in December 2017.²⁵

²¹ These documents include Article 18.8 of the Code of Administrative Offences, which stipulates fines for “foreign nationals and stateless persons” “with or without expulsion” or mandatory expulsion for violations of the migration regime; RF government resolutions of 30 December 2013 No. 1306 and of 8 April 2013 No. 310, which regulate the conditions and procedures for confining “foreign nationals and stateless persons subject to deportation or forcible expulsion from the Russian Federation,” and many others. Judges taking a by-the-book approach also invoke this set phrase (“foreign nationals or stateless persons”). In four Russian regions (Moscow, Moscow Oblast, Saint Petersburg, and Leningrad Oblast), the law prescribes a fine and mandatory expulsion for violations of the migration regime, while in other regions, judges may limit this to a fine, although such cases are rare.

²² For an overview of challenges and applicable standards related to the detention of stateless persons in Europe, see the European Network on Statelessness Publications, *Protecting Stateless Persons from Arbitrary Detention: A Regional Toolkit for Practitioners*, (2016), available at: http://www.statelessness.eu/sites/www.statelessness.eu/files/ENS_Detention_Toolkit.pdf; and *Protecting Stateless Persons from Arbitrary Detention: An Agenda for Change*, (2017), available at: http://www.statelessness.eu/sites/www.statelessness.eu/files/attachments/resources/ENS_LockeInLimbo_Detention_Agenda_online.pdf

²³ The case of Noé Mskhiladze, hearing on 18 April 2017

²⁴ Decision in the case to check the constitutionality of the provisions of articles 31.7 and 31.9 of the RF Code of Administrative Offenses. 23 May 2017. <http://www.ksrf.ru/ru/News/Pages/ViewItem.aspx?ParamId=3337>

²⁵ Communication from Russian Federation concerning the case of KIM v. Russian Federation (Application No. 44260/13), 11.04.2017)

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680708107>

Prisoners and released prisoners

30. Special emphasis should be placed on prisoners and released prisoners among those former Soviet citizens at risk of statelessness. For example, some of these people were imprisoned before the breakup of the Soviet Union and released in independent states where the law does not allow people who have criminal records to become citizens. Others were already stateless without valid identity documents when they entered prison. Both groups have very little chance of obtaining legal status: Article 16.1(h) of the law “On Citizenship of the Russian Federation” classifies unexpunged and outstanding convictions as grounds for rejecting citizenship applications and requires a certificate on the absence of convictions from “new” migrants applying for temporary residence. The Ministry of Justice issues a decision on the undesirability of stay in Russia for a stateless person released from prison on the basis of which they are immediately sent to a SITDFN “until expulsion”. When making this decision, the Ministry does not consider whether the person is indeed removeable. Consequently, such detention of persons who have served criminal sentences and are subsequently denied their access to nationality, is arbitrary.
31. It must be noted in this regard that the general measures set out in the ECHR ruling on the case of “Kim vs Russia” on preventing stateless persons from being detained as “violators of migration rules” have not been implemented by the Russian authorities: even Roman Kim, the applicant of the case, has not been provided so far with any document that would permit him to live legally in Russia.

Inhuman conditions in CTDFNs and lack of oversight²⁶

32. Stateless persons can be detained for two years (which can be even longer in practice) in conditions that the European Court found to be inhuman and degrading and that are in many ways worse than prison conditions. CTDFNs are mixed, housing men and women in the same facilities, built for men, with scant consideration of requirements for gender sensitivity. All detainees suffer from overcrowding, poor nutrition, and deprivation of freedom of movement and exercise. They are not able to use their own money, to work or engage in meaningful activities, and there are no conditions for sport or leisure activities, no access to qualified medical or legal aid, no regular contact with the outside world, and no place for extended visits. Unlike in the case of people suspected of criminal offences, free legal assistance is not provided to CTDFN detainees. There are documented cases of violence against detainees perpetrated by guards and special police forces, as well as arbitrary behaviour by the CTDFNs administration.
33. These same conditions apply to foreign nationals held in CTDFNs. These detainees are mainly labour migrants from Central Asian countries (Uzbekistan, Tajikistan, Kyrgyzstan), and some citizens from former Soviet countries like Ukraine, Kazakhstan, Moldova, Georgia, and Azerbaijan. Besides, there are also nationals from further afield, like China, Vietnam, and African and Latin American countries. Many of the detainees are women who are victims of trafficking for sexual exploitation.
34. Foreign national detainees of CTDFNs are usually found to have violated the migration regime by failing to leave the Russian Federation at the end of their terms of stay (and, in the case of citizens of Ukraine and Syria, where military operations are in progress, because they are not granted refugee status or temporary asylum). These people are all subject to expulsion under court rulings. However, since these court rulings give no indication of any term of detention or deadline for expulsion, it is not uncommon to find people who have been held in SITDFNs for over a year, and even four to five years with short breaks. This occurs because of the absence of clear norms in migration laws on expulsion, the lack of

²⁶ The inhuman conditions in CTDFNs and lack of oversight are described in detail in the report of ADC Memorial “Violations of the Rights of Stateless Persons and Foreign Citizens in Light of the ECHR Judgment in “Kim v. Russia”(2016), available at: https://adcmemorial.org/wp-content/uploads/kim1_bigENG_www.pdf

professionalism among staff at the migration authorities and the Federal Bailiffs Service, and Russia's failure to implement the ECHR judgment on the case of Kim and adopt general measures to change laws and enforcement practices.

35. Of particular concern is the situation for women held in CTFNs. These include pregnant women (CTFNs are not equipped to provide adequate maternity care), mothers separated from minor children (who are held in separate children's institutions), and survivors of sexual exploitation (whose complaints are not investigated and without any access to specialist support).
36. The RF Code of Administrative Offences bans the administrative detention of pregnant women and mothers whose children are under the age of 14 (Article 3.9(2)). However, many foreign women who are pregnant or mothers of young children and who have been sentenced to expulsion are regularly deprived of their freedom and confined in CTFNs for a period of up to two years. This practice discriminates against women who are not Russian nationals and violates the RF Constitution, which establishes equal rights for citizens and non-citizens.
37. Migrant and stateless women, including pregnant women, may spend extended period in mixed CTFNs, which are completely lacking in even the most basic conditions to ensure their health, safety and dignity, without any judicial oversight. There is minimal gender segregation in mixed centres envisioned as short-term holding facilities for men, which lack even minimal conditions for supporting pregnant women, children, and, even more so, new-borns and nursing mothers. They do not provide adequate nutrition, nor access to even the most basic maternity care²⁷, let alone specialist support for survivors of sexual or gender based violence; they do not have dining halls, leisure rooms, exercise areas or libraries; washrooms and toilet facilities are inadequate, there is nowhere to wash clothes, they do not provide soap or feminine hygiene items nor is there anywhere to purchase them; detainees are kept in total information isolation without access to legal aid or specialist support or advocacy.
38. The CTFNs remains closed institutions that are not transparent for external monitoring. It has been difficult for Human Rights defenders to monitor detention conditions in CTFNs, and it was only in February 2015 that Public Monitoring Commissions (PMC) were granted the right to visit these institutions.²⁸ There are many documented cases of local PMCs being denied access to inspect CTFNs.

Stateless children in special institutions

39. In Russia, there is a system of special institutions for migrant and stateless children who are found without parental care or who have been separated from parents or relatives recognised as "violators of migration rules". Stateless children in such circumstances are placed in orphanages and granted Russian citizenship, sometimes despite the fact that they have parents who are stateless. While the provision of nationality to these children can be seen as a positive, the forcible separation from their parents and their placement in orphanages is in clear contravention of principles of the best interests of the child, family unity and non-discrimination, as well as liberty and security of the child.

²⁷ Resolution of the RF Government of 30 December 2013 No. 1306, which regulates the provision of medical aid in CTFNs, does not prescribe that these institutions should have doctors, so in the best cases they have only feldshers (or paramedics).

²⁸ With the coming into force of the Amendments to Federal Law of 10 June 2008 No. 76-FZ "On Public Oversight of the Guarantee of Human Rights in Detention Facilities and on Assistance to Individuals Held in These Facilities".

Separation of Children from their Migrant Parents during Detention and Expulsion

40. A common practice in Russia is the separation of children from their parents who have been confined in CTDFNs and the expulsion of these children separately from their parents. This violates human rights norms of Russian and international laws, in particular Articles 2 (non-discrimination), 3 (best interests of the child), 8 (name, citizenship and family relations), 9 and 10 (family unity) of the UN Convention on the Rights of the Child. It also violates Article 54 of the RF Family Code²⁹, which enshrines the right of a child to the protection of his or her interests, all-round development, and respect for his or her human dignity, as well as other constitutional norms that guarantee the support and protection of the family from discrimination, including in the area of family life, based on respect for dignity of the person.³⁰

Recommendations

41. Based on this submission, the co-submitting organisations propose that Reviewing States make the following recommendations to the Russian Federation:

- I. Fully promote, respect, protect and fulfil its obligations towards stateless persons in Russia, under international Human Rights law. In particular, prohibit any discrimination against stateless persons in the enjoyment of their rights, on the basis of their lack of a legal status.
- II. Accede to and fully implement the Convention relating to the Status of Stateless Persons (1954), the Convention on the Reduction of Statelessness (1961), and the Council of Europe Convention on the avoidance of statelessness in relation to State succession (2006); and ratify the European Convention on Nationality (1997).
- III. Create an effective procedure to grant legal status and nationality to stateless persons, ensuring their protection from administrative persecution. This procedure should include the issuance of identification documents for stateless persons, recognising their right to legally live and work in Russia.
- IV. Ensure that the right of every child to acquire a nationality, as set out in CRC Article 7 is respected, and that all – otherwise stateless – children born in Russia are granted citizenship.
- V. Take positive measures to expedite the legalisation and recognition of Russian nationality of ethnic minority groups vulnerable to discrimination, including the Ahiska (Meskhetian Turks), Roma and Koreans.
- VI. Review the provisions for the deprivation of nationality of naturalised Russian citizens, taking into consideration that deprivation of nationality is not an appropriate punishment, and ensuring at the very least, that no person is made stateless as a result.
- VII. Cease to perceive stateless persons as ‘illegal migrants’ and protect all stateless persons from all expulsion measures.
- VIII. Fully implement the ECHR judgment in the case “Kim vs Russia”, including by putting in place a mechanism for the periodic judicial review of the lawfulness of detention, including in relation to legitimate purpose, duration and conditions of detention in the CTDFNs.
- IX. Legislate for and implement a time limit for administrative detention in line with accepted international standards. Ensure that released detainees are protected from re-detention and that

²⁹ Family Code of the Russian Federation

https://www.consultant.ru/document/cons_doc_LAW_8982/d97e3158b12d1907c420a43e1ce229d24956b2b9/

³⁰ Article 7; Article 17(1); Article 19(1) and (2); Article 21(1); Article 38(1) and (2); Article 45 (1); Article 46 (1) and (2) of the Constitution of the Russian Federation <http://www.constitution.ru/>

cumulative time spent in administrative detention counts towards the maximum time limit.

- X. Provide detainees with free legal assistance so they may be represented in procedures and challenge all decisions related to their expulsion from the country, release from the CTDFN, or, in the case of release without the termination of administrative prosecution, until the end of the administrative case.
- XI. Grant legal stay and work rights to all persons who are released from CTDFNs without being removed. In the case of stateless persons, grant them legal stay, documentation and rights in line with the 1954 Convention, including a facilitated route to Russian nationality. Provide all such persons with free legal assistance to assist with the regularisation of their stay.
- XII. Prohibit the detention of pregnant women, the mothers of young children, the elderly, sick people, and disabled people in accordance with the norms of administrative detention established by the RF Code of Administrative Offenses.
- XIII. Where it is exceptionally necessary to detain women in administrative detention centres (CTDFNs), conditions must comply with international norms and standards including at a minimum through the provision of gender segregated facilities with appropriate gender ratio in staff, gender training for staff, lockable toilet and sleeping facilities, access to feminine hygiene products, gender segregated leisure and dining areas, and access to specialist healthcare, counselling and support services for survivors of sexual and gender based violence.
- XIV. Prohibit the practices of removing children in the process of administrative proceedings, separating families, and expelling children separately from their parents. Children, including those over the age of 16 should not be separated from their parents and placed in remand centres or orphanages.
- XV. Prohibit the practice of separating stateless children from their parents, granting the children Russian nationality and placing them in orphanages, while deportation proceedings are carried out against the parents, ensuring that at all times and in all decisions the best interests of the child principle is paramount, in line with Russia's obligations under the Convention on the Rights of the Child.
- XVI. Reform conventions and intergovernmental agreements related to migrant children removed to the country of origin, such as the Kishinev Agreement in the framework of CIS. According to the principle of family unity, migrant and stateless children should not be separated from their parents or guardians and placed in special institutions, unless it is in the best interests of the child to do so (due to a threat to the child's safety).
- XVII. Ensure that those who have served criminal convictions have access to citizenship, and ensure that they are not deemed "unwanted" and arbitrarily detained, with no prospect of removal.
- XVIII. Provide guarantees for public control over the CTDFNs, including visits by public monitoring commissions, UN agencies, NGOs and other interested persons (including relatives, friends, journalists, volunteers, human rights defenders, ombudspersons, lawyers, and attorneys).
- XIX. Improve detention conditions in CTDFNs. Specifically, end the practice of the arbitrary application of punishment for breaches of discipline; ensure that detainees have a connection with the outside world; bar solitary confinement; arrange for high-quality and expeditious medical care; set up stores that detainees can use; allow the unobstructed use of toilets, shower and laundry rooms; improve nutrition; create the opportunity for education and leisure activities; ensure appropriate gender segregation and balanced gender ratios in staff and guards in mixed facilities.