

**To the attention of the UN Committee on Migrant Workers**

**Submission of ADC Memorial on Draft General Comment No. 5 (2020)  
on Migrants' Rights to Liberty and Freedom from Arbitrary Detention**

**Violation of Migrant Rights during Immigration Detention  
in Russia and other CIS countries**

*Anti-Discrimination Centre Memorial works on protection of the rights of vulnerable groups (ethnic minorities, migrants, stateless persons, LGBTI+ and others) in Eastern Europe and Central Asia, carrying out monitoring, reporting, advocacy on local and international level, opposing discrimination by litigation and human rights education.*

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## Overview

The dissolution of the former Soviet Union over twenty-five years ago gave rise not only to new independent states, citizenships, and passports, but also to problems caused by new borders and migration laws. A number of these problems have yet to be resolved, and there are legal lacunae in the law that make it impossible to regulate migration reasonably while observing the rights of all people involved in it. The intergovernmental structures that arose in the post-Soviet era—the Commonwealth of Independent States (CIS) and, later, the Eurasian Economic Union (EAEU)—helped to create a number of agreements on migration, such as the *Convention on the Legal Status of Migrant Workers and Members of Their Families of States Members of the Commonwealth of Independent States (2008)*, but these agreements do not raise the issues of expulsion and possible restrictions on liberty related to this.

Some countries, specifically Russia, have adopted migration strategies that also barely touch on this issue. In fact, this issue is only briefly mentioned in Clause 26 of the *State Migration Policy Concept of the Russian Federation for 2019-2025 (October 31, 2018)*, which speaks about *the main directions of migration policy pertaining to improving mechanisms for preventing, averting, detecting, and suppressing violation of migration laws* and professes the goal of “*improving procedures for executing decisions on the administrative expulsion of foreign citizens from the Russian Federation and their deportation, as well as procedures for handing over foreign citizens in accordance with international treaties of the Russian Federation on readmission.*” However, the Concept does not make any mention of the fact that execution of expulsion orders is often associated with deprivation of liberty for immigration reasons.

In actuality, measures to enforce expulsion or deportation—including jail stays for migrants—are only contained in national laws (especially in administrative codes), to which international treaties also refer. An exception is the *Chisinau Agreement on Cooperation of States Members of the CIS on the Return of Minors to their State of Residence (2002)*, which concerns the return of migrant children to their country of origin and in places directly calls facilities where children are held until they are sent home (and, often, upon their arrival in their country of origin) reception centers run by the Ministry of Internal Affairs (the police); in other words, this international treaty refers to places of detention for children in migration. This agreement and the practices related to it (the Chisinau agreement is actually one of the few international agreements of CIS states on migration) deserves separate consideration.

### **The problem of deprivation of liberty of children for immigration reasons**

It should be noted that migrant children in CIS countries (that is, children who are located in one country and come from a different CIS country) are mostly the children of migrant workers who are in a country with other family members or, if the children are older adolescents, who arrived on their own for the purpose of working. In Russia alone, there are millions of migrant workers from Central Asian countries, the South Caucasus, Ukraine, Belarus, and Moldova. During the first years after labor migration from poorer countries in the region to Russia became a trend, it was mostly young men who participated in this process, but in recent years more and more families with children are migrating for work. Unfortunately, children’s rights are often violated in migration: Not all children enroll in Russian schools, with many staying home in their family’s temporary homes to help with the younger children and attending school remotely (that is, they do not go to school every day and are given almost all their tasks as homework). Many children struggle with linguistic and cultural adaptation, which is exacerbated by poverty and problems with legal status.

Children over the age of 16 are allowed to work part of the work week in Russia, but this only applies to children of Russian citizens. Migrants cannot obtain work permits until the age of 18. However, liability for breaking migration laws, including working without a permit, sets in at the age of 16. This makes it possible to prosecute migrant children and discriminates against them in comparison to their peers who are Russian citizens. In and of itself, punishment for minors who break migration laws does not involve deprivation of liberty; the punishment is generally a fine and expulsion from the country. However, as an interim measure (i.e., to enforce expulsion) [children aged](#)

[16 to 18 may be placed in a reception center run by the Ministry of Internal Affairs](#), where they may be held up to 30 days under a court decision. Detention conditions in these reception centers are prison-like. Children under the age of 16 also end up in police precincts if during document checks stamps are found to be missing and so forth.

In reality, many, many children do not leave Russia for years, which means they do not renew their migration documents; in these cases, children can be detained right on the street, delivered to a precinct, and then taken to special “social wards” in children’s hospitals. The same fate awaits children taken from their parents during raids by the migration police. In one well-known incident that took place in Saint Petersburg in 2015, a five-month-old infant was torn from his mother’s hands at a precinct and taken to the hospital after a report on the discovery of an unknown child was filed (even though his relatives presented his birth certificate and the names of the child and both of his parents were definitely known); the child later died under unclear circumstances at the hospital. The courts repeatedly refused to find that the forced separation of this healthy child from his mother and his admission to a hospital violated the rights of both the mother and the child. Meanwhile, this practice is not uncommon, and in many cases the question of where a child seized from their migrant parents (accused of breaking migration rules) should be placed and under what grounds is decided in exactly this way—a report on an “abandoned child” is written and the child is admitted to a hospital, thus transforming these “social wards” into places of detention for migrant children in the first hours after the family’s arrest. Then children under the age of 16, that is, children who are too young to face administrative prosecution for violating migration rules, are sent to one of the Transit shelters, which are considered social institutions, but actually serve as detention centers for migrant children. Even though these Transit shelters are not considered “places of detention” (unlike the reception centers run by the Ministry of Internal Affairs), it is clear that children are held there under lock and key, as proven by the fact that they need special permission to meet with their free parents, that they are not taken to school, and so forth.

Both staff members at the shelters and police officers working in reception centers have to complete the documents required to return children home. After clearance with the country of origin, children are taken out of the Transit system in the accompaniment of police staff or social workers (they are sometimes reunited with parents who are also being expelled at the time of expulsion). Upon arrival in their country of origin, children who were expelled without their parents may again find themselves behind bars. For example, in Tajikistan and Uzbekistan (donor countries of millions of migrants to Russia) children are placed in local reception centers where they may spend up to 30 days waiting to be reunited with their families or may be sent to a children’s home if their families cannot be located. This practice is regulated by the abovementioned *Chisinau Agreement*.

The substance of this agreement concerns the question of the return of children to their countries of origin as part of cooperation between Ministry of Internal Affairs structures of CIS countries, which means that the Chisinau Agreement contravenes the concept of the rights of the child by handing children in a vulnerable position over to the police.

**ADC Memorial calls for the revocation of the outdated Chisinau Agreement and the replacement of police norms for the return of children with more humane agreements that take into account contemporary standards for observance of the rights of migrant children. All forms of the immigration detention of children—in hospitals and closed social institutions for those under the age of 16 and in jails for those over the age of 16—must be revoked in international agreements and domestic laws. Separation of migrant children from their parents and family members must be prohibited regardless of migration status. This is particularly true for children “found abandoned,” whose names and families are known from documents or at least from the words of their parents. Safe places of stay must be organized for children in a country without adult relatives so that they are not deprived of liberty, can continue their education, and can receive the required medical and/or psychological care if needed. A child’s return to their country of origin should not be connected with a stay in police reception centers or other places of deprivation of liberty. Social structures in the country of stay that are responsible for returning children should be prepared to transfer children immediately upon their arrival to a family or, if the child does not have family in this country, to social and**

**educational institutions where children are not deprived of liberty or to foster families. The return of children should be handled by educators and psychologists, not officers from the Ministry of Internal Affairs and other security structures.**

**Vulnerable groups of migrants  
(groups at risk of arbitrary and extended deprivation of liberty due to migration status)**

**Stateless persons** are one of the most vulnerable migrant groups from the standpoint of arbitrary and extended deprivation of liberty.

Russian migration laws and CIS migration treaties often join foreign citizens and stateless persons into one group and then apply migration laws to both of these groups. There are still many stateless persons residing in areas that were previously part of the Soviet Union who continue to hold invalid Soviet passports or have no passport whatsoever. When people who do not have documents permitting their stay in the country are identified, they are arrested, after which they are often sentenced by a court to compulsory deportation with placement in a Foreign National Detention Center (FNDC). This “facility” is not considered to be a jail, since this violation is not punishable by a prison sentence; it is instead considered a measure to ensure enforcement of the court’s deportation order.

But in a number of cases, expulsion is not possible. This is particularly true for stateless persons because deportation only takes place after the country to which the migrant is to be deported confirms the migrant’s citizenship. In the case of stateless persons, there is no such country. In other cases, countries are unable to confirm citizenship, since all the information about the citizen to be expelled is in a territory that is not under the control of the country’s government. This happens with citizens of Ukraine who arrived in Russia from a territory not under the control of Kiev (residents of Donetsk and Luhansk oblasts and sometimes even of Crimea, if they have not applied for Russian citizenship for some reason). All of these groups of migrants may spend extended periods within the walls of an FNDC, where they are subjected to what amounts to imprisonment in very difficult conditions. Under current Russian law, the maximum term of stay in an FNDC is [two years, which is the length of stay for those who cannot be expelled or released in accordance with a court ruling](#). One of the main problems is that a decision on placement in an FNDC is issued one time, after arrest, and then may not be reviewed for a prolonged period because there is still no mechanism for regular judicial review of the terms and soundness of restriction of liberty. In this way, a measure that is considered to be an enforcement measure becomes a lengthy punishment of captivity for people who have not committed any crime.

The law should have been changed after the European Court of Human Rights issued a key judgment in the case of *Kim v. Russia*, which concerned a complaint about stateless person Roman Kim’s two-year stay in an FNDC and obligated Russia to take measures of a general nature. But the judgment was not executed in this regard, and the intervention of another high court, this time the Constitutional Court, was needed. This court ruled that Russia’s failure to implement the decision in Kim’s case violated the rights of stateless persons imprisoned in FNDCs (the case of Noé Mskhiladze) and directed the government to amend Russia’s administrative code, create a mechanism for regulating judicial review of terms of stay in FNDCs, limit the maximum term to several months, and develop a procedure for documenting stateless persons. This ruling has not been implemented yet, although amendments to the law have been submitted for public discussion. Courts are frequently guided by this ruling when considering appeals from stateless persons regarding arbitrary detention and have issued decisions on release of these prisoners from FNDCs and “independent controlled departure from the Russian Federation,” which ignores the obvious fact that undocumented people cannot cross a state border without committing what then becomes a criminal offense. Courts never rule on the matter of documenting stateless persons in their country of residence, [even though this is the only correct approach to the problem](#).

**Migrants whose documents intentionally or unintentionally contain errors** also face the risk of an extended and essentially purposeless stay in an FNDC. Sometimes there are errors in one letter of a person’s name or in their date of birth, but the data that the country of residence and the country of citizenship have do not correspond (this often happens during translation from one

language to another), so this person cannot be expelled and may be held for a year or more in an FNDC. There is also effectively a legal lacuna here because a court itself cannot issue a ruling finding one spelling or another accurate and also cannot establish a person's identity using more credible documents. A court may only correct "technical errors" and cannot change the spelling of names or dates in a deportation document. These absurd trifles can lead to family separation, extended, agonizing imprisonment, sometimes for seriously ill people, and so forth.

Another serious problem that leads to violation of the rights of hundreds of people is **the concept of an "undesirable person,"** which is applied to migrants who have been previously convicted of criminal offences. In essence, this means that non-citizens of the Russian Federation convicted of any (major or minor) infraction are not released after serving their sentences in prisons or camps, [but are instead sent to an FNDC or other similar center for deportation from the country](#). Some of these people do not hold citizenship of another country and others cannot prove citizenship, which means that their prison terms do not end and are instead replaced with a more difficult existence in custody where they cannot work, exercise, or receive medical treatment as they did in regular prisons. Some people who do not have Russian citizenship are found "undesirable" in the country where they have spent their entire life and face deportation to a country they left as children, where no one is expecting them.

People assigned the status of "undesirable person" can include the family members of Russian citizens and the parents of children who are Russian citizens; deportation condemns these people and their families to separation, which violates their right to family life.

**ADC Memorial believes that all legal lacunae concerning stateless persons, people from territories that are not under the control of the government of their country of origin, and people with mistakes in their documents must be filled in order to avoid the pointless and arbitrary imprisonment of these people. Stateless persons must be released as early as possible and must also receive assistance to become documented in their country of residence. The concept of the "undesirability" of people with prior convictions contradicts the logic of criminal punishment, which should not exceed the term handed down by the court, and means that people are condemned to spend more time behind bars waiting for their freedom. This principle is incorrect and violates human rights and freedoms.**

### **Groups of migrants with special requirements**

Among the people sent to temporary FNDCs to enforce deportation are people in special situations. These include **pregnant women** (there have been cases where women went into labor at an FNDC, were taken under escort to a maternity hospital, and were then sent back to their cells with their newborns), **the mothers of small children, and people with serious health problems**. There have even been cases where migrants died because they did not receive the necessary medical care for an extended time <https://adcmemorial.org/en/columns/birth-and-death-in-russian-detention-centres/>. It is obvious that being held in custody is harmful and pointless for these people and that it is a crime to refuse to take them to the hospital or provide them with medication.

Another group with special requirements includes **victims of sexual exploitation and transgender people**. Victims of sex trafficking do not receive the assistance with rehabilitation that they require and suffer from discrimination and poor treatment. Transgender people are sometimes placed in a cell with people of the wrong gender because that gender matches their documents but not their sense of self or their appearance. These people are sometimes doomed to a lonely, extended imprisonment.

**ADC Memorial believes that placement in custody should not be applied to people with special requirements, particularly when these people are not able to receive medical care. These cases demand a different solution that provides an alternative to deprivation of liberty so that people can receive treatment and rehabilitation, remain with their children, and so forth.**

## **Prisoners at temporary FNDCs during the COVID-19 pandemic**

The COVID-19 epidemic reached Russia and CIS countries in the spring of 2020; borders were closed as a result, and migrants stopped being deported from FNDCs. Members of the Public Monitoring Commission of Saint Petersburg who visited a temporary detention center in the summer of 2020 reported that: *Because of the COVID-19 pandemic, there are many people in the Center whose documents are in order but who cannot be expelled because the borders are closed. Specifically, there are 25 citizens of Ukraine and nine citizens of Belarus, some of whom have been waiting to be deported for over six months.*

At the beginning of quarantine, there were 445 people in this Center awaiting expulsion or deportation. [Human rights defenders called on the Russian government to release all migrants from immigration jails](#), but this call was not heard, and some people are still waiting to be deported because there will not be any flights to their countries for the foreseeable future.

**ADC Memorial believes that it is arbitrary to deprive people of liberty in an FNDC in a situation where deportation is not possible because of closed borders and discontinued transportation routes.**

### **Conclusion**

The immigration detention of people is an extreme measure that is unnecessary and harmful in most cases. In a region with many millions of migrant workers, the extended detention of hundreds or even thousands of people does not help regulate migration and only violates the rights of these prisoners. As borders across the world are closed because of the pandemic, any sense in this measure is totally lost.

The placement of children, their parents, sick people, undocumented people, and stateless persons in places of confinement must be ended entirely. People who are located in the country without documents must receive assistance applying for identification that would allow them to live without breaking the law or risking detention at any moment. Judicial reviews of the detention of migrants must be held regularly and must include free defense of the rights of migrants and stateless persons. Legal norms and judicial practice must take account of the rights of migrants, their family situation, and any special requirements they may have.

Discriminatory treatment based on migration status (primarily differences in the exercise of human rights and freedoms) is unacceptable.