



HUMAN RIGHTS IMPACT ASSESSMENT OF THE COVID-19 RESPONSE IN RUSSIA

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Table of Contents

I. Executive summary	4
II. Methodology	5
III. Brief country information	6
IV. Incidence of COVID-19 in Russia	7
V. The Russian Authorities' Response to Covid-19 and its Impact on Human Rights	8
VI. Summary of Key Findings	42
VII. Recommendations	45

I. Executive summary

What are the impacts on human rights of the restrictive measures imposed by the Government of Russia in response to the COVID-19 pandemic? How have the Russian authorities complied with international human rights standards while implementing measures to combat the spread of Covid-19? These questions lie at the heart of this study by International Partnership for Human Rights (IPHR) and Public Verdict Foundation. This study examines these measures through a human rights lens of international, regional human rights treaties of core and soft law (non-binding) standards.

Through our monitoring, we have identified the following key points on how the COVID-19 pandemic was handled in Russia from mid-March until mid-July 2020:

In response to the COVID-19 pandemic, the Russian authorities implemented strict quarantine measures at an early stage, restricting the movements and freedoms of the citizens of the country. The first case of COVID-19 in Russia was officially registered on 2 March 2020, in the vicinity of Moscow.¹ The virus began spreading across the country a few weeks later but Moscow has remained the epicentre of the outbreak in Russia.

At the time of writing, there are 733,699 confirmed COVID-19 cases in Russia. So far, 11,439 deaths have been attributed to the virus.

In response to the pandemic, Russia implemented a “high alert” regime on 1 April 2020 by way of federal law, along with highly restrictive measures (both regionally and nationwide) to limit the freedom of movement and other fundamental freedoms of residents. The national borders were shut and certain regions in the country such as Chechnya closed internal borders. Within cities, movement by both vehicle and foot was also restricted. The quarantine was lifted in early June 2020.

Through our monitoring of the situation in Russia, we have also documented the following developments during the COVID-19 pandemic:

- During the “high alert” regime introduced in response to the COVID-19 pandemic, the authorities have adopted a number of amendments to legislation, some of which have negatively affected the protection of fundamental freedoms in the country. There are also serious concerns as to the failure of the authorities to declare a full state of emergency or emergency situation.
- Freedom of expression: the introduction of the “fake news” laws adopted in March 2020 have been used as a way of silencing critical voices during the emergency health crisis. Such measures have been used to target activists, journalists, bloggers and politicians.
- Certain vulnerable groups – including the elderly, people with disabilities, migrant workers – have not had their health and welfare needs fully met as a result of discrimination or lack of adequate resource allocation.
- Deaths and suffering from COVID-19 among the prison population and medical professionals – resulting from the Government’s failure to take necessary steps to protect these vulnerable groups – is likely to violate the right to life and/or prohibition on inhuman treatment.

1 In fact, two very first cases (both travelers from China) were reported on 31 January 2020 in Siberia, but they were then successfully isolated.

- The mobile app “Social Monitoring” and the ‘Digital Pass’ systems used to track individuals’ whereabouts potentially violates users’ privacy rights. Such measures have been deeply controversial.
- Freedom of movement: the use of “observatories” to quarantine individuals on public health grounds raises concerns vis-à-vis allegations of ill treatment by police and/or security staff and poor ‘prison like’ conditions.
- Fair trial: at the time of writing, there are no national guidelines and eligibility criteria in place for the use of remote hearings. Moreover, the use of remote justice (videoconferencing, Zoom, Skype) should be used sparingly and with due procedural safeguards in place.
- Incidents of domestic violence increased during the lockdown. Whilst the authorities have taken measures to protect the rights of women and girls at risk during the pandemic, more information should be provided about support services available to them.

II. Methodology

In order to respond to the unfolding human rights crisis across the former Soviet Union (FSU) region, IPHR devised a monitoring tool – an in-depth questionnaire covering civil, social and economic rights which have potentially been affected by the restrictive measures introduced by the authorities to contain the spread of COVID-19. The monitoring provides a framework to assist local civil rights organisations in overseeing ways in which the authorities respond to the crisis, so that core human rights, especially those of the most vulnerable are protected. The monitoring tool covers following areas of interest:

1. Emergency measures
2. Right to liberty and security and freedom of movement
3. Right to a fair trial
4. Prisons and other places of detention
5. Right to Privacy
6. Freedom of assembly and association
7. Freedom of expression/access to information
8. Health care
9. Housing
10. Right to water
11. Economic and financial response
12. Right to education
13. Equality and non-discrimination
14. People Living with disabilities
15. LGBTQI persons
16. Migrants, ethnic minority groups and xenophobia
17. Children, young and older people

Much of the information and data presented in this report has been provided by national focal points – local researchers working with IPHR and local civil society organisations with which IPHR has been collaborating for many years. While collecting data, we paid particular attention to rights violations that occurred in the context of restrictive measures and policies that were introduced by local authorities in relation to the COVID-19 response.

The IPHR team analysed dozens of alleged rights violations reported by local civil society actors and independent media. Statistical data on prevalence of the disease and information about restrictive measures introduced in response to the COVID-19 crisis have been obtained from official government sources. Collected information has been analysed against applicable regional (Council of Europe) and universal (United Nations) standards.

III. Brief country information

The Russian Federation (hereafter Russia) is the largest country on earth and shares international borders with some 14 countries.² Its territory covers some 17 125 191 km² with an estimated population of 145 million inhabitants³ Russia is made up of the following main minority groups: Tatar 3.7%, Ukrainian 1.4%, Bashkir 1.1%, Chuvash 1%, Chechen 1%, Armenians (0.86 %) and Mordovans (0.54%); Russians are the majority at 77.7%. The remaining 8.5% of the population is made up of other small ethnic groups.⁴ According to the last census in 2010, nearly 20% of the Russia's population identified themselves as belonging to an ethnic group with more than 190 recognised in the country. Russian is the official language of the country (81% of the population). Over a hundred minority languages are spoken in the country today, the most commonly spoken of which is Tatar (more than 3% of the population).⁵ Other minority languages include Ukrainian, Chuvash, Bashir, Mordvin, Circassian and Chechen.

Russia is a federal presidential republic with executive power split between the President (as head of state) and the Prime Minister.⁶ Legislative power is exercised by the Federal Assembly which consists of a directly elected lower house (State Duma or Parliament, 450 members popularly elected for a four-year term) and an appointed upper house, the Federation Council (170 seats made up of representatives of Russia's federal entities). All legislation must first pass the State Duma before being considered by the Federation Council.

According to the Constitution of Russia (1993), the country is made up of 85 federal entities known as constituent subjects which enjoy a certain degree of autonomy over their economic and political affairs.⁷

2 Azerbaijan, Belarus, China, Estonia, Finland, Georgia, Kazakhstan, North Korea, Latvia, Lithuania, Mongolia, Norway, Poland and Ukraine

3 Embassy of the Russian Federation in the Kingdom of Cambodia, 'Russia in figures and facts' - <https://embrusscambodia.mid.ru/web/cambodia-en/russia-in-figures-and-facts>; Population figures can be accessed here: <https://www.worldometers.info/world-population/russia-population/>

4 See: Minority Rights Groups, Russian Federation, <https://minorityrights.org/country/russian-federation/>

5 See BBC – Languages across Europe - http://www.bbc.co.uk/languages/european_languages/countries/russia.shtml

6 The president is elected for six years and is also the Commander-in-Chief of the army. The Prime Minister is appointed by the President, with the approval of the lower house of Parliament.

7 Constituent subjects include provinces, republics, autonomous okrugs, krays, federal cities and autonomous oblasts.

The constitution grants regional bodies with the authority to pass laws, provided that those laws do not contradict the Constitution or existing federal laws.

In terms of human rights, the constitution provides for human rights protections (“the Rights and Freedoms of Man and Citizen”) in line with the principles and norms of international law.⁸ Russia is a signatory to the key international human rights treaties including the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the UN Convention against Torture and Other Cruel and Inhuman or Degrading Treatment or Punishment (CAT). In addition, Russia is a party to the European Convention on Human Rights (ECHR), the European Social Charter (ESC) and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ECPT).

President Vladimir Putin was elected as President in 2000 (most recently winning re-election in 2018). He has served as both prime minister and president for 20 years and his current tenure is due to end in 2024. In July 2020, the population backed constitutional reforms that could keep him in power until 2036.⁹

Human rights NGOs have criticised President Putin for seeking to tighten his authoritarian grip by controlling the media and stifling any opposition voices through the use of repressive laws and a widening crackdown on civil society space.¹⁰ Russia’s human rights record has come under sharp criticism from the UN, the Council of Europe and the Organisation for Security and Cooperation in Europe. Russia’s economic situation has worsened with the onset of the pandemic and the country is now heading towards a recession. Unemployment increased from 4,5% in 2019 to 6.1% in May 2020.¹¹ Putin’s popularity rate has dropped to an all-time low of 59% in recent polls, as he manages the COVID-19 crisis.¹²

IV. Incidence of COVID-19 in Russia

The first case of COVID-19 in Russia was officially registered on 2 March 2020, in the vicinity of Moscow.¹³ The virus began spreading across the country a few weeks later but Moscow has remained the epicentre of the outbreak in Russia.

At the time of writing, there are 733,699 confirmed COVID-19 cases in Russia. So far, 11,439 deaths have been attributed to the virus.¹⁴

8 Article 17.1, Constitution of the Russian Federation - <http://www.constitution.ru/en/10003000-03.htm>

9 BBC News, ‘Putin strongly backed in controversial Russian reform vote’, 2 July 2020 - <https://www.bbc.co.uk/news/world-europe-53255964>

10 For more information on the most recent developments, see for example, Human Rights Watch, World Report 2020, Russia - <https://www.hrw.org/world-report/2020/country-chapters/russia#>

11 The World Bank, Russia Economic Report – 6 July 2020 <https://www.worldbank.org/en/country/russia/publication/rer>

12 The Moscow Times, ‘Putin’s Approval Rating Drops to Historic Low: Poll’, 6 May 2020 - <https://www.themoscowtimes.com/2020/05/06/putins-approval-rating-drops-to-historic-low-poll-a70199>

13 In fact, two very first cases (both travelers from China) were reported on 31 January 2020 in Siberia, but they were then successfully isolated.

14 See CoronaTracker - <https://www.coronatracker.com/country/russia/>

There is no demographic, ethnic or socio-economic national breakdown available for COVID-19 fatalities in Russia. Moscow (and some other regions) publish daily age breakdowns for new cases but no aggregated data is available with regards to fatalities. However, daily data over a two-week period in Moscow offers some information regarding age breakdown of new cases:

Age group	New cases
18-45 years old:	40-50% (this group increased in July 2020);
46-65 years old:	28-35% (this group decreased in July 2020);
66-79 years old:	8-11%
80+:	3-6%
Children:	5-8%

V. The Russian Authorities' Response to Covid-19 and its Impact on Human Rights

a. The Response

In response to the pandemic, many countries have imposed emergency measures to manage the unprecedented public health crisis. However, such measures (often made in haste) may fail to comply with international human rights standards and at the expense of fundamental rights. These measures should be used with caution and in strict compliance with the principles laid down in international human rights law.

Under international human rights law states may derogate from their human rights obligations in very exceptional circumstances. As a signatory to the ECHR, Russia is bound by Article 15, which permits derogations "in time of war or other public emergency threatening the life of the nation...to the extent strictly required by the exigencies of the situation".¹⁵ Does COVID-19 meet this criterion? The virus certainly poses an 'immediate and real' threat to the fabric of the nation with the potential to kill many thousands, irreparably damage the economy and overrun health services. The European Court of Human Rights has stated that, in order to derogate, the crisis should be so severe that 'the normal measures or restrictions, permitted by the Convention for the maintenance of public safety, health and order, are plainly inadequate'.¹⁶

States may not 'contract out' of certain human rights obligations even in a time of emergency. The Council of Europe has a strict derogation framework in place should states wish to formally derogate

15 The relevant section of Article 15, ECHR states, "1. In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under the Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law'

16 The Greek Case (1969) 12 YB 1 Commission Report, para 153(4)

from certain human rights obligations under the ECHR.¹⁷ Most importantly, any derogation should be a temporary measure and comply with key principles of legality, proportionality (as to scope, duration and geographical coverage), non-discrimination, exceptionality, notification and publication and subject to regular review.¹⁸ At the time of writing, Serbia, Romania, North Macedonia, Albania, Georgia, Estonia, Republic of Moldova, San Marino, Armenia and Latvia have all informed the Council of Europe of their intention to derogate from the certain obligations under the ECHR.¹⁹

The ECHR also allows for restricting certain fundamental rights (including the rights to freedom of expression, freedom of association and assembly, and respect for private and family life) for the protection of health, even when state parties have not formally derogated from their obligations under the treaty. However, any limitations must be strictly necessary, proportionate, time limited, lawful and subject to review; nor may measures be arbitrary or discriminatory.

I. DECLARATION OF A “HIGH ALERT” REGIME

On 1 April 2020, the President signed a federal law empowering the government to introduce a “high alert” or “emergency situation” regime (throughout Russia or in part of its territory) including in the event of the coronavirus pandemic.²⁰ An “emergency situation” regime (чрезвычайная ситуация) is introduced by local, regional or federal authorities depending on the severity of the situation; any restrictions imposed under this regime may not limit human rights and freedoms guaranteed by the constitution. This regime has been routinely applied in cases of natural disasters such as floods, forest fires or environmental industrial accidents.

The “high alert” regime (повышенная готовность) is introduced by local, regional or federal authorities where there is a threat of an extreme situation. Again, the restrictions imposed under this regime may not limit human rights and freedoms guaranteed by the constitution.

The “high alert” regime was introduced in all regions of Russia, including Moscow (since 5 March 2020) and the Moscow Region (since 13 March 2020).

On 1 April 2020, amendments were made to the Criminal Code of the Russian Federation (the “Criminal Code”) and the Code of Administrative Offences of the Russian Federation (the “Federal Code”) to increase the penalties on individuals and entities for failing to comply with the anti-epidemic regulatory regime.²¹ The new offences introduced harsher penalties for committing violations during a state of emergency, an epidemic or a period of quarantine.

17 Certain rights are protected against derogation, namely Article 2 (the right to life, except in respect of deaths resulting from lawful acts of war), Article 3 (the right to be free from torture, inhuman or degrading treatment or punishment), Article 4 (1) (slavery and servitude) and Article 7 (no punishment without law).

18 Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, UN Doc E/CN.4/1984/4 (1984)

19 <https://www.coe.int/en/web/conventions/full-list/-/conventions/webContent/62111354>

20 Federal Law No 98-FZ, 1 April 2020 amending the 1994 statute On the Protection of the Population and Territories against Natural and Technogenic Emergencies. Both the “high alert” and “emergency situation” regime are based on this act.

21 No 99-FZ of 1 April 2020. “Administrative offences” are essentially misdemeanours not serious enough to merit criminal prosecution. Offences may include “administrative arrest” for up to 30 days.

On 2 April 2020, the Government approved rules of conduct under the “high alert” regime.²²

The Government of Russia has not declared a ‘state of emergency’ and has not issued a formal derogation under Article 15 of the ECHR.

Emergency measures at the regional level:

The city of Moscow has been at the epicentre of the pandemic in Russia with more than half of the country’s COVID-19 cases and deaths until June 2020.

In terms of legislative framework, Moscow has its own Code of Administrative Offences (‘the Moscow Code’) which was adopted in 2007 and provides a range of offences punishable under local, Moscow legislation.

On 5 March 2020, Moscow Mayor Sergey Sobyenin, introduced the “high alert” regime indefinitely²³ This decree was the first legislative instrument adopted in Russia at the regional level to address the COVID-19 crisis and served as the basis for future restrictive measures including: restrictions on presence at the workplace, suspension of leisure and educational activities (introduced by decree on 10th and 16th March 2020 respectively), self-isolation for the elderly (for over 65s, introduced by decree on 26 March 2020), the compulsory use of the “Social Monitoring” App (introduced by decree on 21 April 2020) and the “Moscow Digital Pass” system (introduced by decree on 12 April 2020). Various restrictions were introduced for various periods of time; most of them were repeatedly extended, even if on slightly more relaxed terms.

On 29 March 2020, the Mayor issued a further decree essentially introducing lockdown through self-isolation and social distancing measures which was effective immediately and until further notice. ²⁴ The decree “obliged” all individuals to socially distance from each other and to self-isolate at home. Muscovites were only able to leave home on very limited grounds: to seek emergency medical care or in the case of a direct threat to life or death, to go to work if required to do so, to shop at the nearest food store or pharmacy, to walk pets within 100 metres of their place of residence or to dispose of garbage. These measures were introduced prior to the federally mandated enforcement powers taking effect.

On 1 April 2020, the Moscow Code was amended to introduce new penalties for non-compliance with the “high alert” regime. On 2 April 2020, the mayor signed a law imposing fines for persons found to be violating the self-isolation regime.

Similar amendments to local Codes were implemented in the Moscow Region and St. Petersburg a few days later.

The restrictive measures imposed in Moscow (mandatory self-isolation, automatic imposition of fines) have been the subject of four separate legal actions by activists in the Moscow City Court. To date, two

22 Rules of Citizens’ and Organisations’ Conduct during the Heightened Preparedness or Emergency Regime. Regulation No. 417 of 2 April 2020

23 No 12-UM of March 5, 2020 see also No 68-UM - https://www.mos.ru/mosarchiv/documents/view/240335220/?utm_source=search&utm_term=serp

24 Decree of the Mayor of Moscow of 29 March 2020, No 34-UM “On Amending the Decree of the Mayor of Moscow of 5 March 2020 No 12-UM” - <https://www.mos.ru/upload/documents/docs/34-YM.pdf>

claims have been rejected by the court and one decision is publicly available.²⁵ The claims centred on constitutional freedoms of movement and the right to privacy. Further cases are pending in Yekaterinburg (Sverdlovsk Region) and Syktyvkar (Komi Republic).

Further, the regional stay-at-home orders issued in Moscow have also been criticised for failing to rest on any legal authority or impose any kind of time limit. It should be noted that the stay-at-home order for the elderly always had a time limit whereas the general one did not.²⁶

II. RESTRICTIONS IMPOSED (AND LIFTED)

Lockdown measures at the federal level and regional level Moscow:

Lockdown measures in Russia and Moscow occurred over a period of approximately three weeks from 2 to 30 March 2020 during which the authorities took critical measures to manage the spread of the pandemic including closures of schools, shops, restaurants and other nonessential services.

The timeline of the key lockdown measures is listed below:

- 2 March 2020: quarantining measures imposed for arrivals from Iran, South Korea and Italy.
- 5 March 2020: introduction of the “high alert” regime in Moscow.
- 7 March 2020: Spain, France and Germany added to the list of “unsafe countries”.
- 10 March 2020: mass events with more than 5,000 people banned in Moscow.
- 14 March 2020: 14-day mandatory self-isolation for arrivals from “unsafe” countries and their families. Family visits to patients in hospital temporarily banned. Free attendance i.e. non-compulsory at schools.
- 16 March 2020: any events with more than 50 people banned; mandatory self-isolation extended to arrivals from the US, UK, EU, Ukraine and Belarus as well as family members living with them. Entry for foreign nationals and stateless persons “temporarily restricted” (effective from 18 March 2020), except for diplomats, their families, freight drivers, pilots as well as permanent residents of Russia.²⁷
- 21 March 2020: schools closed in Moscow (initially to 12 April 2020); day-care facilities remained open.
- 25 March 2020: announcement of fully “non-working days” from 30 March to 3 April 2020²⁸ and closure of libraries, community centres, cinemas, night clubs and other leisure, culture and social facilities in Moscow.
- 26 March 2020: over 65 years old individuals and all people with a range of chronic diseases obliged to self-isolate in Moscow (in their homes and including dachas i.e. summer houses outside

25 Moscow City Court, Decision no. 3a-3877/2020 In the case of Averin, Afanasyeva et al.: <https://www.mos-gorsud.ru/mgs/services/cases/first-admin/details/2e810f30-8a52-40a9-ad1e-47e7dede5f18>; TASS, ‘Moscow resident challenges self-isolation regime with court’, 3 April 2020 - <https://tass.com/society/1139899>

26 The Wilson Center, Washington versus Moscow: Official Responses to COVID-19 in U.S. and Russia’s Capitals, 2 April 2020 <https://www.wilsoncenter.org/blog-post/washington-versus-moscow-official-responses-covid-19-us-and-russias-capitalsn>

27 See decree: <http://static.government.ru/media/files/wwGGarWzAuGcDRw4OFHBfkInXcpD0ZPu.pdf>

28 Decree of the President of the Russian Federation No 206 “On the announcement of non-working days in the Russian Federation” dated 28 March 2020; this order mandated all employees to be given paid “vacations” by their employers, with only very limited support from the government. On 2 April 2020, the scheme was subsequently extended by the president to 30 April 2020 and was in force until mid-May.

the city) and remain at home until at least 14 April 2020 (subsequently prolonged several times and cancelled on 8 June 2020).

- 27 March 2020: all regular and charter international flights suspended except for flights arranged by the government to return Russian nationals from abroad.
- 28 March 2020: restaurants, bars, cafeteria and other catering facilities closed in Moscow except for delivery. All stores closed except for grocery stores, pharmacies or those selling essential products. Large parks closed. Services requiring personal contact (e.g. hairdressers) closed, except for medical, social care, transportation, banking, insurance, communications and funeral homes.
- 29 March 2020: mandatory “stay-at-home” order issued by Mayor of Moscow.²⁹
- 30 March 2020: borders closed, except airports which remained open for returning Russian nationals and exempted foreign nationals.³⁰

Most other regions introduced a mandatory 2-week quarantine for people arriving from other regions (at least from Moscow and St Petersburg, as most affected regions). Chechnya was the first region to close its internal borders on 5 April 2020. Most but not all regions also introduced mandatory lockdown simultaneously with Moscow or soon thereafter. A number of regions closed particular towns, villages, or areas due to outbreaks or vulnerability.

Critics have also raised concerns about procedural irregularities in relation to the initial restrictions imposed by the Moscow authorities. Such measures should, by law, be published in advance to be scrutinised on anti-corruption grounds.³¹

Easing of lockdown:

At the time of writing, Russia is slowly easing its lockdown restrictions through a three stage process set out by the federal Chief Sanitary Medical Officer.³² On 27 May 2020, Sobyenin introduced further relaxations to the lockdown regime through regional legislation.³³ In Moscow, the city started to open its economy as of 12 May 2020 (restarting the construction industry and factories) and non-food shops on 1 June 2020. The self-isolation and digital pass system were cancelled on 9 June 2020. As of 23 June 2020, cafes and restaurants, gyms, swimming pools, sports complexes, libraries and nurseries were all reopened. As of 13 July 2020, Muscovites are recommended to wear masks outside and are required to wear both masks and gloves on public transportation and in buildings. The 1.5 meters social distancing rule was stopped by decree on 13 July 2020. Countrywide, heads of Russian regions are planning to lift restrictions in a gradual manner.³⁴

29 Muscovites were permitted to leave their homes for the following reasons: to travel to work for key workers, medical emergency, buying groceries and other essential foods, walking pets within 100m of home and rubbish disposal

30 Decree of the Government of the Russian Federation no. 763-p of March 27, 2020: <http://static.government.ru/media/files/uPySAqzA9AV39jD1h71za3OR9eslxIDj.pdf>

31 OVDInfo.org, Freedom of Assembly in Russia during the pandemic – What happened from March 10 to April 22, 2020 - <https://ovdinfo.org/reports/freedom-assembly-russia-during-pandemic#1>; see also: Закон города Москвы от 08.07.2009 № 25 «О правовых актах города Москвы», Article 17, parts 2(4) and 5. – <https://duma.mos.ru/ru/0/page/zakon-goroda-moskvyi-ot-8-iyulya-2009-goda-25-o-pravovyih-aktah-goroda-moskvyi>

32 The easing measures were published on 8 May 2020 by the federal Chief Sanitary Medical Officer: Methodological Recommendations no. MP 3.1.0178-20, approved on May 8, 2020.

33 Decrees No 61-UM and 62-UM of 27 May 2020

34 Tass News, Nearly all Russian governors planning gradual lifting of COVID-19 restrictions, says Putin – 6 July 2020 <https://tass.com/society/1175213>

III. PENALTIES FOR VIOLATING RESTRICTIONS

The imposition of any penalties for the violation of lockdown measures should respect principles of proportionality, impartiality and non-discrimination.

Violations of the restrictive measures fall under existing criminal and administrative enforcement regimes.

Federal penalties:

In terms of administrative violations, on 1 April 2020 the Federal Code of Administrative Offences was amended to include new fines for violations of the sanitary-hygienic rules and non-compliance with the anti-epidemic measures. The fines range from 15 000 - 40 000 RUR (175-470 EUR) and up to 500 000 RUR (5,890 EUR) for companies.³⁵

If the violation results in an illness or death, but does not fall under the Criminal Code, fines increase up to 1 000 000 RUR (11 770 EUR) or suspension of the company's business activities for up to 90 days. For individuals, fines range from 150-300 RUR (1,760-3,530 EUR). These measures were aimed principally at hospital wardens and other "officials."

The Criminal Code was also amended to increase the applicable penalties for violations of the sanitary and epidemiological rules.³⁶ Fines now range from 500 000 RUR (6160 EUR) to 700 000 RUR (8632 EUR), as well as imprisonment for up to two years. In addition, a fine of up to RUR 2 million or imprisonment for up to four years can be imposed if it causes the death of an individual. If a violation causes the death of two or more persons, it carries the possibility of imprisonment for five to seven years.

Penalty regime: Moscow

Failure to comply with the rules of the "high alert" regime in Moscow may entail fines of 4,000 RUR (50 EUR) for individuals, up to 40,000 RUR (493 EUR) for company officers and up to 300,000 RUR (3699 EUR) for companies. Citizens and companies are liable under the Moscow Code if their actions do not fall under the Federal or Criminal Code.

The penalty regime introduced in Moscow is arguably proportionate (fines are in the region of EUR 50) but appears to have been applied in an unjust or arbitrary way. There have been reports of fines being issued on the basis of individuals residing in locations other than those where they are officially registered (as stamped in their IDs). In Tatarstan, fines have been issued for exceeding permitted time limits (e.g. shopping) which were, in fact, out of the individual's control for reasons such as transport delays. The situation has improved over time and the courts or city government have annulled many fines. In early May 2020, the Moscow city police authority advised that the registration stamp issue should not be a lawful ground for finding a violation of the quarantine restrictions.

³⁵ Amendment to Art 6.3 of the Federal Code of Administrative Offences of the Russian Federation. In addition, the amendment added a new Article 20.6.1., Failure to Comply with the Rules of Conduct during the Heightened Preparedness or Emergency Regime. With the title reproducing the language of the Government Regulation adopted a day later, it provides penalties for any other undesirable conduct during the restrictions not covered by Article 6.3. above and broadly described in the Government Regulation. The range of penalties is lower and broader (more flexible) than in the latter: EUR 12,5-375 for individuals and 125-625, 375-625 and 1,250-3,750 for the three other categories.

³⁶ Federal Law 100-FZ

Furthermore, there has been confusion on the distinction between local and “federal” fines both of which were introduced in early April 2020. This is principally due to the fact that the language of the federal legislation (Article 20.6.1 of the Federal Code of Administrative Offences) is very similar to that of the Moscow Code and thus there has been a lack of clarity as to whether violations fall under the Moscow Code or the Federal Code of Administrative Offences. The Supreme Court’s guidance failed to provide any further assistance on this point.

The issue of automatic fines for breaches of lockdown measures in Moscow has also attracted controversy. These fines, imposed under the Federal Code of Administrative Offences, are usually reserved for traffic violations.³⁷ However, under the Moscow Code, automatic fines were extended to apply to lockdown violations under the “high alert” regime. The fines are issued automatically (i.e. through a “simplified” procedure) but may be appealed at a later date in court. The “simplified” procedure offers little by way of procedural safeguards to a defendant who cannot benefit from submitting evidence or participating in an adversarial procedure. Moreover, it appears that the penalties were applied inconsistently across the country: in Stavropol Kray, citizens were cautioned in 95% of the cases yet in Adygeya the courts imposed fines in two thirds of cases.³⁸

The opportunity to appeal these fines is time-consuming, burdensome and particularly difficult for the those who are sick or recovering from COVID-19. The introduction of automatic fines under the Moscow Code is currently being challenged on the grounds that the Moscow Duma acted ultra vires and beyond its powers as it had no jurisdiction to use this “simplified” procedure for breaches of the lockdown.

b. Legality and Judicial Oversight of Measures

The Government of Russia imposed these restrictive measures on the basis of a very general federal law which delegated and decentralised the fine details and regulations to regional authorities and local levels of government. The federal legislation was passed in compliance with the current constitutional framework and on the correct procedural basis. Amendments to both the Criminal Code and federal Code of Administrative Offences were adopted by the State Duma as required. Thus, it would appear that the measures were introduced through the correct legal and constitutional frameworks.

Nonetheless, serious issues arise around the restrictions of rights and freedoms imposed by the Government of Russia in a non-state of emergency context. It appears that the government deliberately stopped short of invoking a state of emergency at the federal level. (Several regions of the country have imposed states of emergency in recent years: in October 1993, a state of emergency was declared in Moscow for several days; in 1992-1993, a state of emergency was declared in North Ossetia and in Ingushetia and in 2010 a state of emergency was declared in seven regions due to forest fires). Yet, all the measures in place have the hallmark of a state of emergency with attendant limitations on rights and freedoms.

Moreover, the Government of Russia has not, to date, provided any explanation or reasons for failing to declare a state of emergency or emergency situation, even at a regional level.

37 Article 28.6.3 of the Federal Code of Administrative Offences

38 Holod, «Беспричинно передвигался пешком». Как государство штрафовало россиян, а суды штамповали сотни решений во время эпидемии, 15 June 2020 - <https://holod.media/covid-courts>

The Constitution provides for a state of emergency (чрезвычайное положение) and permits “certain restrictions...on human rights and freedoms with an indication of their limits and the period for which they have effect”.³⁹ The President is the only official entitled to declare a state of emergency which must then be approved by the Federation Council within 72 hours. The maximum length of a state of emergency is 30 days (60 days in local areas) which may be renewed by the President.

The governing legislation, On the State of Emergency, includes epidemics as one of the legitimate grounds for imposing a state of emergency.⁴⁰ The measures that may be imposed under a state of emergency are wide ranging and include suspension of executive regional bodies (i.e. direct federal rule), restrictions on movement, businesses, rights of assembly; evacuations, quarantine, suspension of local legislation and the deployment of armed forces. The law explicitly states that any restrictions should comply with Russia’s international human rights obligations and avoid any discrimination (Art 28(2)). Further, Article 37 requires derogations under both the ICCPR and the ECHR.

The Government of Russia has published all decrees and rulings pertaining to COVID-19 on its official website and major measures have been announced by President Putin. In Moscow and the Moscow region, all decrees were published and continue to be available at the time of writing. On the whole, regional authorities have been efficient in informing the public via mass media and official government websites of COVID-19 restrictive measures.

c. Impact on the Right to Life & Prohibition Against Inhuman Treatment

The right to life is fundamental and non-derogable and has been described by the UN Human Rights Committee as “the supreme right”.⁴¹ Under Article 2 of the ECHR, the State has a positive duty to safeguard the lives of those in its jurisdiction which, in practical terms, may require the State to take steps or direct action to protect lives and meet its human rights obligations.

Further, the ECHR prohibits torture, inhuman or degrading treatment or punishment.⁴² There are no exceptions or limitations on this right. In certain contexts, treatment which reaches a minimum level of severity may fall within Article 3 of the ECHR. Again, states are under a positive obligation to prevent such ill-treatment.

I MEDICAL PROFESSIONALS

In the public health context, States will need to take particular care to protect healthcare professionals whose very work puts them in a perilous and dangerous situation.

Medical professionals globally have been at the forefront of the COVID-19 pandemic and, as frontline workers, are at greater risk of contracting the virus. Many have faced huge challenges in securing adequate personal protective equipment (PPE) which is critical for their work.

39 Russian Constitution, Article 56

40 No.3-FKZ of 30 May 2001

41 Article 6(1) ICCPR; Article 2, ECHR. HRC, General Comment No 6. The right to Life 30 April 1982, para 1

42 Article 3, ECHR

The healthcare system in Russia has been in crisis for many years with financial cutbacks, staff shortages and a decrepit system inherited from the Soviet era. Medical professionals have had to operate in extremely difficult conditions during the pandemic working in 12-hour shifts and remaining quarantined in hospitals together with patients, for fear of infecting their families (in Moscow, the mayor provided hotel accommodation for such doctors and nurses).⁴³ In some cases, medical professionals have expressed through social media their concerns about the inadequate PPE and difficult working conditions: in some instances they have been forced to re-use equipment or to use it on a selective basis. The local health services have taken action against whistle-blowers who have spoken out by either forcing them to retract their statements or face disciplinary actions.⁴⁴

More worrying, medical professionals have reported feeling unsafe at work. In a recent poll (conducted among 10,000 medical workers in early April 2020), 72% responded that they did not feel protected in the workplace, 14% of respondents noted a lack of masks and respirators at the hospital; about half said they did not have enough protective suits and 23% said that they had to buy their own suits.⁴⁵

It is difficult to gauge the true number of infections among the medical community as there are no national statistics readily available. Investigations by MediaZona revealed 222 deaths as at 19 May 2020. MediaZona were able to confirm 186 cases (about 84 per cent) and calculated the proportion of medical workers in relation to the total official count of COVID-19 related deaths. The resulting 6.83% was very high compared to all other countries where the scope of the pandemic was similar and such statistics were available (the next highest was Iran with just 1.6%).⁴⁶

The authorities have taken some measures to ensure that infected medical professionals are compensated financially. The St Petersburg Governor, Alexander Beglov, signed a decree offering one-time payments: 300 000 RUR (EUR 3,500) on becoming infected, 500 thousand (about EUR 6000) for a disability and 1 million RUR (about EUR 12,000) for the family in case of death. However, only 30 million RUR (EUR 350 000) have been allocated to the city budget for this purpose, and in practice these payments are not easy to receive (doctors were initially required to prove that they had not become infected by their own fault). On 20 May 2020, Governor Beglov reported that 68 infected medical workers received 300 000 RUR each, and families of three deceased medical professionals received 1 million RUR each.

On 12 April 2020, the federal government introduced “additional stimulating payments” (monthly benefits for April, May and June 2020) for “medical workers and other workers directly involved in providing medical assistance to citizens with confirmed coronavirus infection”: 80 000 (EUR 950) for hospital doctors, 50 and 25 000 RUR (EUR 600 and 300) for mid- and lower-level medical personnel. Medical personnel are not well remunerated, so these extra payments have been well received. Some other regions, including Moscow and St. Petersburg, have provided bonuses in addition to the federal ones.

43 For more information, see Human Rights Watch, Russia: Health Workers Face Retaliation for Speaking Out, 15 June 2020 - <https://www.hrw.org/news/2020/06/15/russia-health-workers-face-retaliation-speaking-out>

44 Human Rights Watch, Russia: Health Workers Face Retaliation for Speaking Out, 15 June 2020 - <https://www.hrw.org/news/2020/06/15/russia-health-workers-face-retaliation-speaking-out>

45 Kommersant, Медики не чувствуют себя защищенными, 7 April 2020 - <https://www.kommersant.ru/doc/4316521>

46 Mediazona, В России от коронавируса погибли не меньше 186 медиков — смертность среди них в 16 раз выше, чем в других странах. Исследование «Медиазоны», 19 May 2020 - <https://zona.media/article/2020/05/19/martyrology>

Challenges remain in securing adequate PPE despite comments from the Ministry of Health, as recent as 2 June 2020, that there are adequate stocks available.⁴⁷

There are potentially powerful arguments to say that the failure of the State to provide adequate PPE may violate the right to life or constitute inhuman treatment under the ECHR.

II PEOPLE IN PRISON⁴⁸

The advent of COVID-19 poses many human rights challenges but none more so than for those in prisons or people deprived of their liberty. For this vulnerable community, the human rights impact of the pandemic is amplified and felt all the more acutely, especially given states' positive obligations under international human rights law to protect those in its custody. There are currently over 11 million people in prison globally on any given day and the spread of COVID-19 within the prison estate has been rapid and of grave concern.⁴⁹ The outbreaks in the prison setting presents a huge public health challenge as these individuals will, in due course, return to the wider community.

There is a robust legal framework protecting the rights of people in prison – most importantly the UN Standard Minimum Rules for the Treatment of Prisoners ('the Nelson Mandela Rules'), a set of non-binding standards, which lay out a minimum universal standard for the treatment of prisoners.⁵⁰ These rules (some 122 in total) govern every aspect of a prisoner's life and are firmly grounded in principles of compassion and dignity.

Further, the treatment of people in prison and detainees under international law is governed by a large number of international and regional human rights treaties. For example, the ICCPR prohibits torture and cruel, inhuman or degrading treatment or punishment and sets out the rights of all persons deprived of their liberty.⁵¹ In addition, the UN Convention against Torture (CAT) prohibits torture at all times and in all places, including in a detention or custodial setting. The ECHR also includes binding prohibitions against torture and rules pertaining to the treatment of prisoners and persons deprived of their liberty.⁵²

People in prison are at particularly high risk of contracting COVID-19 given the closed setting and their overwhelming poor health. In particular, infectious diseases run rampant inside prisons, including tuberculosis, HIV and Hepatitis C. The right to health does not stop at the prison gates and people in prison are entitled to the same standard of healthcare as those in the wider community. The Nelson Mandela Rules make it clear that '...Prisoners should enjoy the same standards of health care that are available in the community, and should have access to necessary health-care services free of charge without discrimination on the grounds of their legal status'⁵³

47 Ministry of Health of the Russian Federation, О наличии средств индивидуальной защиты в медицинских организациях, 2 June 2020 - <https://minzdrav.gov.ru/news/2020/06/02/14092-o-nalichii-sredstv-individualnoy-zaschity-v-meditsinskih-organizatsiyah>

48 The terms "people in prison" includes those individuals who are in pre-trial detention or have been convicted. Prison and detention facilities is used interchangeably to refer to any place where people are deprived of their liberty under criminal justice measures or sanctions

49 Penal Reform International, Global Prison Trends Report 2020 - <https://www.penalreform.org/resource/global-prison-trends-2020/>

50 The UN Mandela Rules - <https://undocs.org/A/RES/70/175>

51 Article 7 & 10 of the ICCPR

52 Article 3, ECHR; Article 6, ECHR

53 UN Mandela Rules, 24.1

The prison regime in Russia is quite unique and based on a system of penal colonies (akin to barracks housing a number of prisoners) dating back to the Stalin era. These institutions have come under sharp criticism from human rights groups and international prison monitoring bodies with reports of torture and widespread ill-treatment in pre-trial detention and prison facilities.⁵⁴ According to official statistics from the Federal Penitentiary Service (FSIN), as of 25 June 2020 there were 766 cases of COVID-19 among detainees and convicted persons (in both pre-trial detention facilities and penal colonies) and 2,132 cases among prison staff.⁵⁵ No deaths have been recorded to date.

There have been calls to reduce and decongest the prison population in a bid to manage the spread of the pandemic in prison, but none have been successful to date. A draft amnesty bill seeking the release of pre-trial detainees was prepared by the Human Rights Institute, a prisoners' rights NGO. In early April 2020, the Presidential Human Rights Council urged key criminal justice stakeholders (including the FSIN, Council of Judges and Investigative Committee) to "consider" releasing a section of pre-trial detainees and placing them under house arrest instead. On 22 April 2020, the Presidential Human Rights Council also invited the Supreme Court to expedite hearings on early release of eligible prisoners.⁵⁶ To date, the Supreme Court has declined to take any action on early release measures but the Ministry of Interior has indicated that it is implementing measures to reduce the use of pre-trial detention. By 1 April 2020, only 263 people of 327 arrested in Moscow in the first quarter of 2020 remained in custody.⁵⁷ However, these figures should be read with care as the decrease in the number of pre-trial detainees could be due to several reasons including transfers from pre-trial detention to penal colonies. Reports from the Presidential Human Rights Council provide helpful data: according to the Ministry of Interior, investigators in Moscow used arrest powers 1.5 times less often in March 2020 than in February 2020 (84 arrests in March 2020 to 120 arrests in February 2020). At the time of writing, no data is available about the number of requests for arrests issued by the courts at the behest of the Investigative Committee investigators and FSB investigators.

Further, reporting from the Presidential Human Rights Council shows a decrease in the pre-trial prison population in three regions: in Moscow (see above), in St. Petersburg (from 297 in January 2020 to 157 in March 2020) and in the Moscow region (from 174 in January 2020 to 143 in March 2020). However, these figures are questionable as independent reporting suggests that the average pre-trial population in Moscow is about 9,000 and the number of detainees in SIZOs (pre-trial facility) actually increased from March 2020 to the beginning of April 2020.⁵⁸ For example, in the three days after the restrictive measures came into force in Moscow, the courts received a peak number of requests for arrests: from 19-21 March 2020 courts received 167 requests for arrests (154 were granted), an average consideration of 56 cases per day by the courts. In stark comparison, the courts considered 20-49 arrests cases on the same days of the week in February 2020.

54 Human Rights Watch, Russia: Events of 2019, <https://www.hrw.org/world-report/2020/country-chapters/russia>; Centre for Eastern Studies – Russia behind bars: the peculiarities of the Russian prison system, 7 February 2019 - <https://www.osw.waw.pl/en/publikacje/osw-commentary/2019-02-07/russia-behind-bars-peculiarities-russian-prison-system>

55 FSIN of Russia, Интервью заместителя директора ФСИН России Александра Хабарова информационному агентству «ТАСС», 25 June 2020 - http://fsin.gov.ru/news/index.php?ELEMENT_ID=512204&sphrase_id=1364439

56 Presidential Human Rights Council, Члены Совета по правам человека выступают за максимальное расширение практики рассмотрения дел по УДО, 22 April 2020 - <http://www.president-sovet.ru/presscenter/news/read/6243/>

57 Presidential Human Rights Council, МВД России сообщило о значительном снижении лиц, направляемых в следственные изоляторы в период пандемии коронавируса, 6 May 2020 - <http://www.president-sovet.ru/presscenter/news/read/6263/>

58 <https://www.rbc.ru/society/22/04/2020/5e95b56b9a794741d3a2a3f2?from=newsfeed>

There are particularly serious human rights concerns in relation to immigration detention centres (so-called centres for temporary detention of foreign citizens) and closed refugee camps. In some instances, individuals have been detained for many years and cannot return home given the pandemic and current flight restrictions. The conditions in these detention centres are very poor and detainees have no access to TV or internet and little communication with the outside world (they may make external calls once every four days).⁵⁹ The courts continue to detain individuals in immigration detention centres.

In terms of general healthcare, the situation varies between institutions (pre-trial and penal colonies). Most big pre-trial detention facilities in Moscow are closed for quarantine and remain so until further notice; only 2 out of 8 pre-trial detention facilities are currently accepting new arrivals with a 20-day quarantine procedure in place. Staff wear full protective suits and regularly disinfect facilities. There are on-site hospitals, including ICT beds and testing facilities at these institutions. Reports suggest that the situation in penal colonies and pre-trial detention facilities in the regions are less than ideal with a scarcity of masks and hygiene products – a single mask may be provided for several days.⁶⁰ In early April 2020, the FSIN announced that prisoners in Moscow could purchase masks from the shop suggesting an official internal shortage within institutions.⁶¹ People in prison should not be required to pay for their own PPE.

The importance of contact with the outside world cannot be underestimated for people in prison and is provided for in the UN Mandela Rules.⁶² The Government of Russia suspended short and long term family visits to pre-trial detention facilities and penal colonies by FSIN order on 16 March 2020.⁶³ Whilst there has not been a centralised response to ensure contact with the outside world, the FSIN has indicated that it will “where possible” provide people in prison with an opportunity to use video communication with family members.⁶⁴ A commercial service provider, Zonatelecom, services FSIN institutions (including video call services) and has offered a 50% discount during the pandemic (until 15 July 2020); call rates are RUR 50 (less than 1 EUR) for a 15-minute session. In addition, the FSIN email system (FSIN-Pismo) is in use but experienced delays at the outset of the pandemic. It is important to mention that FSIN institutions nationwide are equipped with 514 video terminals⁶⁵. Taking into account that FSIN operates 1,068 institutions,⁶⁶ this means that fewer than 50% of the institutions are able to provide video conferencing opportunities between prisoners and their families.

These initiatives, whilst promising, are difficult to implement as many people in prison do not have the funds in their accounts to pay for these services. In a bid to improve communication with the outside

59 Radio Free Europe/Radio Liberty, «Им некуда идти». Эпидемия переполнила миграционные центры, 22 April 2020 - <https://www.svoboda.org/a/30566236.html>

60 Radio Free Europe/Radio Liberty, «Закроем в бараке, вот и все лечение». Колонии и СИЗО во время пандемии, 13 April 2020 - <https://www.svoboda.org/a/30550045.html>

61 Izvestiya, Заключение московских СИЗО смогут купить маски в магазине ФСИН, 7 April 2020 - <https://iz.ru/996837/2020-04-07/zakliuchennyye-moskovskikh-sizo-smogut-kupit-maski-v-magazine-fsin>

62 UN Mandela Rules, Rule 58 – 1. Prisoners shall be allowed, under necessary supervision, to communicate with their family and friends at regular intervals: (a) by corresponding in writing and using, where available, telecommunication, electronic, digital and other means; and (b) by receiving visits.

63 Rossiyskaya Gazeta, Без передачи. Из-за вируса отменены все свидания в колониях и СИЗО, 18 March 2020 - <https://rg.ru/2020/03/18/fsin-vremenno-zapretila-svidaniia-v-koloniiah-i-sizo.html>

64 Presidential Human Rights Council, ФСИН России предоставила СПЧ подробную информацию о мерах предупреждения коронавирусной инфекции в колониях и СИЗО, 7 May 2020 - <http://president-sovet.ru/presscenter/news/read/6264/>

65 FSIN of Russia, ФСИН России сообщает, 15 June 2020 - http://fsin.gov.ru/news/index.php?ELEMENT_ID=511014

66 Если быть точным - <https://tochno.st/problems/prisons>

world, the Presidential Council suggested that the email system should be provided free of charge. The system is being piloted in the Leningrad region.⁶⁷

In terms of access to justice, people in prison have experienced difficulties during the reporting period. Whilst lawyers may visit their clients, they are required to bring their own PPE and, in most cases, hold meetings behind a glass partition. Such measures raise confidentiality issues. Human rights NGOs also reported that lawyers were refused admission to visit their clients in some penal colonies⁶⁸. In addition, a number of external bodies including NGOs and the Public Supervision Commissions (PSCs) have been unable to visit due to prison quarantines imposed at the early stages of the pandemic.⁶⁹ The situation has improved to a degree and on 15 June 2020, the FSIN reported that the PSC had visited 105 penal colonies and 97 pre-trial detention facilities during the period 16 March 2020 to 9 June 2020⁷⁰ (that means that only 20% of FSIN institutions have been visited once by PSC members during three months). PSCs and regional ombudspersons are currently liaising with the FSIN as to the modalities of establishing communication channels with people in prison. In the meantime, FSIN offices have opened hotlines for prisoners' families as well as federal and regional ombudspersons.⁷¹ The PSC has an online form to submit reports about human rights abuses.⁷² It is important to mention that there is no publicly available information about how these measures are working in practice and to what extent they are effective and provide possibilities for families to obtain information about their relatives in prisons and for prisoners to be heard by PSC members and regional ombudspersons.

At the same time, human rights NGOs and lawyers regularly receive information from their clients in prisons or prisoners' families about different difficulties related to COVID-19 and restrictions on correspondence within the penitentiary system. All this information is cross checked by human rights NGOs and lawyers and published on an online map called Grey zone⁷³. Human rights NGOs and lawyers send requests to regional and federal FSIN. Replies usually contain general words about the situation and do not provide the specifics.

The pandemic has shed light on an already weak and broken criminal justice system and exposed its structural inequalities. Whilst the Government of Russia is using its 'best endeavours' to protect people in prison from contracting the virus, there are worrying shortfalls in the level of care afforded to them. The extremely poor conditions coupled with the lack of PPE may well lead to inhumane treatment and/or loss of life.

67 Presidential Human Rights Council, В СПЧ разработали временные рекомендации для работы ОНК, включающие дистанционную связь с правозащитниками, 8 May 2020 - <http://www.president-sovet.ru/presscenter/news/read/6269/>

68 <https://t.me/publicverdict/1193>

69 Public Supervision Commissions are public-law entities, currently active in 45 of Russia's 85 regions and comprising from 4 to 40 members, nominated by NGOs and other non-state organizations and selected by the Public Chamber of Russia (membership rotates every 3 years). PSBs' mandate is to supervise compliance with human rights requirements in their region's "places of forced confinement". PSCs can visit any such places without any permission needed but have to notify the respective agency in advance. They can talk to prisoners and visit rooms/cells where they are held. Based on such visits and correspondence with inmates, they can provide recommendations to any official bodies and work with FSIN to resolve identified issues.

70 FSIN of Russia, ФСИН России сообщает, 15 June 2020 - http://fsin.gov.ru/news/index.php?ELEMENT_ID=511014

71 Arigus, Открыта «Горячая телефонная линия» для родственников заключенных, отбывающих наказание в исправительных учреждениях Бурятии, 26 April 2020 - <https://arigus.tv/news/item/3826/>

72 <http://antipytki.ru/soobshhit-o-narushenii-prav-cheloveka/>

73 <https://prisonmap.info/>

d. Impact on freedom of movement and the right to liberty and security of the person

Quarantines and isolation measures will, by their very nature, impact upon an individual's freedom of movement and may, in some cases, amount to a deprivation of liberty.⁷⁴ Under international human rights law, any deprivation of liberty must be reasonable, necessary, proportionate, time bound, non-discriminatory, in accordance with the law and for a specific aim. These principles apply even in a state of emergency and are to be strictly interpreted. The ECHR allows for the lawful detention of an individual to prevent the spread of infectious diseases.⁷⁵ Most importantly, human rights law prohibits the arbitrary deprivation of liberty.

Conversely, the right to freedom of movement affords the right of everyone to move freely within a given territory, to enter their own country of nationality and to leave any country. The right is not absolute and may be lawfully restricted on certain grounds (including public health grounds) if they are deemed necessary in a democratic society.⁷⁶

In Russia, the authorities have used the "anti-virus" laws to prevent public protest (see section on freedom of assembly) and to detain individuals (often journalists, bloggers and human rights defenders) on a short-term basis through the use of "administrative arrest" powers. For instance, a popular v-logger and "Covid dissident", Vadim Cheldiyev, was detained in St Petersburg several days before a large public protest in Vladikavkaz, capital of North Ossetia in the North Caucasus. In May 2020, the authorities detained Viktor Nemytov, an activist who participated in a "single person picket" near a police building and, as a consequence, received a 15 day sentence on public protest grounds.

There are real concerns that the Russian authorities are using emergency powers (including detention powers) in an arbitrary and discriminatory way to target opposition groups. The UN Working Group on Arbitrary Detention has cautioned against such actions stating that the "power to detain persons during public health emergencies must not be used to silence the work of human rights defenders, journalists, members of the political opposition, religious leaders, health-care professionals or any person expressing dissent or criticism of emergency powers or disseminating information that contradicts official measures taken to address the health emergency."⁷⁷

The use of "observatories" to house COVID-19 patients has been somewhat controversial. In addition to confinement at home, the Russian authorities have placed quarantined individuals in "observatories" (on medical orders) to convalesce. Such measures were deployed at the early stages of the pandemic for incoming travellers.⁷⁸ These facilities, usually country hotels or sanatoria, require patients to stay for a two weeks period of quarantine and medical tests under observation.⁷⁹ The patients are served

74 ECHR, Article 5; ICCPR, Article 9

75 ECHR, Article 5 1(e); ICCPR 12 (3)

76 ECHR Protocol 4, Articles 2 and 3

77 UN Working Group on Arbitrary Detention, Deliberation No. 11 on deprivation of liberty in the context of public health emergencies, 8 May 2020 - <https://www.ohchr.org/Documents/Issues/Detention/DeliberationNo11.pdf>

78 Radio Free Europe/Radio Liberty, Quarantined In Siberia: Russia's Evacuees from Wuhan get a frosty reception, 7 February 2020 - <https://www.rferl.org/a/quarantined-in-siberia-russia-s-evacuees-from-wuhan-get-a-frosty-reception/30422183.ht>

79 Mediazona, Побег, путешествие, прогулка, работа, молитва. За что возбуждают уголовные дела о нарушении карантина [Escape, journey, walk, work, prayer: what can lead to a criminal prosecution for violating quarantine], 29 April 2020 - <https://zona.media/article/2020/04/29/casus-236>

in their rooms with personnel on hand to take care of basic needs. However, freedom of movement is severely restricted: patients may not leave their rooms (in some cases rooms have been locked from the outside) and the facilities are guarded by security or police. Such quarantine facilities are a de facto form of deprivation of liberty. In addition, there have been complaints of degrading treatment by law enforcement officials and of prison-like conditions.⁸⁰ There have been many cases of individuals absconding from the observatories which has, in some instances, resulted in criminal prosecutions.⁸¹ There are questions around the legality of these quarantine facilities and, at the time of writing, there has been one legal challenge to confinement in an observatory in Sochi on the grounds of unlawful imprisonment. The UN Sub Committee for the Prevention of Torture has noted that those people who are held in quarantine “are to be treated at all times as free agents” and should have sufficient facilities to “permit internal freedom of movement and a range of purposive activities.”⁸²

The restrictions on freedom of movement and deprivation of liberty are necessary on public health grounds to manage the spread of the virus and do, on the face of it, fall within permitted grounds under the ECHR. However, it is critical that the rights of those who are detained and deprived of their liberty are fully respected. Reports of degrading treatment by law enforcement officials at “observatories” are of particular concern.

e. Impact on Fair Trial Rights

The right to a fair trial is a general norm of customary international law and is provided for in both international and regional human rights treaties.⁸³ Both instruments provide a full range of rights and guarantees applicable to both criminal and non-criminal proceedings. The minimum guarantees include the right to a fair and public hearing, to be tried without undue delay, to be present and meaningfully participate during trial and the right to prepare a defence and communicate with counsel.⁸⁴ Court hearings should, as a rule, be subject to public scrutiny in line with the principle of an “open court”.⁸⁵ Any restrictions to fair trial rights should comply with key human rights principles of legality, necessity and proportionality.

The principle of ‘equality of arms’ between the parties is of fundamental importance as each side should have adequate time to prepare a defence and have access to case materials. International human rights standards also require that everyone charged with a criminal offence is entitled to be tried without undue delay.⁸⁶ These standards do not envisage proceedings without any delay but prohibit undue delay.

80 Kavkazsky Uzel, Сочинец счел тюремными условия в городском обсерваторе [Sochi resident found the conditions in the city observatory prison-like], 15 May 2020 - <https://www.kavkaz-uzel.eu/articles/349642/>

81 Under Art 236 of the Criminal Code “violation of sanitary and epidemiological rules that caused mass infection... or a threat thereof” and carries a maximum penalty of two years in prison

82 UN Sub Committee for the Prevention of Torture, ‘Advice of the Subcommittee on the Prevention of Torture to States Parties and National Preventive Mechanisms relating to the Coronavirus Pandemic’, 25 March 2020 - <https://www.ohchr.org/Documents/HRBodies/OPCAT/AdviceStatePartiesCoronavirusPandemic2020.pdf>

83 ECHR, Article 6; ICCPR, Article 14

84 The European Court of Human Rights has stated that the defendant’s right to be present at his/her criminal trial is of “capital importance” – *Hermi v Italy* 181 14/02, Grand Chamber 2006; see also *Murtazaliyeva v Russia* App No 36658/05, 18 December 2018

85 See General Comment 32, UN Human Rights Committee - CCPR/C/GC/32 – para 29, 23 August 2007

86 ICCPR, Article 14(3)(c)

With the advent of COVID-19, criminal justice and judicial systems have had to adapt and flex their practices accordingly. In particular, the pandemic has had an impact on the speed at which cases are heard, new modalities for hearings, adjournments and the suspension of non-urgent cases. Online hearing technology has certainly helped facilitate remote access to justice. However, it is not fool proof and using technology has exposed teething problems, technological glitches including screen freezing, poor reception, video and audio drop out. Whilst the use of video and videoconferencing technology has been found to be not incompatible with the ECHR, there should be appropriate legal safeguards in place to allow the detainee to follow the proceedings, see other persons present and to hear what is being said without technical impediments.⁸⁷ The courts in Russia have been using bespoke videoconferencing facilities for 20 years. The use of online videoconferencing tools such as Skype or Zoom (which can be used from any device or location) potentially raises fair trial concerns especially in those cases where the defendant may be unable to participate in the proceedings through technical glitches and/or cannot follow the proceedings.

During the period 19 March 2020 – April 20 2020, the justice system in Russia worked at pace with over 2 million cases adjudicated nationally. On 18 March 2020, the Presidium of the Supreme Court issued new COVID-19 guidelines for courts. These measures included: no in person appointments; the submission of paperwork by email or regular mail; the consideration of urgent cases by means of a video link. Pre-trial detention hearings were deemed to be urgent. On 8 April 2020, further amendments to legislation under the Federal Code of Administrative Offences established strict deadlines for appeal hearings in connection with administrative offences (i.e. misdemeanours) that entailed any deprivation of freedom.⁸⁸ For instance, “administrative arrest” cases in respect of a detained individual should be considered by the court within 48 hours after detention.⁸⁹ On 29 April 2020, the Supreme Court issued a resolution permitting the use of videoconferencing and/or web conferencing facilities where technically possible.⁹⁰ In the case of urgent criminal proceedings, the Supreme Court issued a further resolution on 30 April 2020 permitting entire trials by videoconference subject to procedural safeguards and other criteria.⁹¹

There are, to date, no national guidelines in place to determine which matters should be eligible for remote hearings although courts are being urged to use remote technology wherever possible. The Supreme Court has indicated that criminal proceedings should be suspended in those cases where the defendant is precluded from participating.⁹² However, it is at the discretion of each court to decide

87 Yevdokimov and Others v Russia, no. 27236/05, February 16, 20016; Marcello Viola v Italy App no 45106/04, 5 October 2006

88 Sections 3-5, Article 29.6 of the Federal Code of Administrative Offences

89 Article 26(4), Federal Code of Administrative Offences

90 <http://www.supcourt.ru/files/28873/>

91 Supreme Court, second review of “COVID questions” indicated that “a court may decide, for each particular criminal case or material that merits urgent adjudication and taking into account quarantine measures implemented in pre-trial facilities and self-isolation regime being mandatory for all citizens, to hold the entire trial via video conferencing systems, which will ensure personal participation and procedural safeguards for a defendant and other parties.” Обзор по отдельным вопросам судебной практики, связанным с применением законодательства и мер по противодействию распространению на территории Российской Федерации новой коронавирусной инфекции (COVID-19) № 2, 30 April 2020. Question 16, p. 17. - <http://www.supcourt.ru/files/28881/>.

92 As per the Supreme Court’s review of “COVID questions” and also inferred from the general provision of the Code of Criminal Procedure, Art 238 (1)

whether or not to suspend the proceedings depending on the reasonable time requirements and procedural deadlines. There was an increase in the number of pre-trial detention hearings in Moscow in March and April 2020 but merit hearings in criminal cases saw a sharp decrease from February 2020.⁹³

The right to call witnesses for the defence in criminal cases is a central tenant of the principle of 'equality of arms'.⁹⁴ Defendants are entitled to call witnesses "on the same conditions" as the prosecution although it is not unlimited and there is discretion given to the court as to who it summons.⁹⁵ According to IPHR partners, courts have been reluctant to admit witnesses for the defence at in-person hearings. This is clearly problematic from a human rights perspective as it places the defendant at a distinct disadvantage in terms of presenting their case. The Government of Russia should take measures to mitigate this situation so as to ensure that the equality of arms principle is fully respected.

International human rights standards provide for the right of criminal suspects to communicate in private with counsel and "in conditions that fully respect the confidentiality of their communications."⁹⁶ During the pandemic, defence counsel have faced serious challenges in meeting with their clients confidentially in pre-trial facilities. Whilst they have been granted access to their clients, they may only communicate with them through a telephone (earpiece) and behind a glass partition. These conversations are routinely recorded and recording facilities cannot be disabled by correctional staff. Lawyers have also been required to bring not only their own PPE (which, in some regions has been difficult to procure) but also their own medical gowns and protective suits. Lawyers from Moscow and St. Petersburg report difficulties meeting with their clients in other cities due to the mandatory two-week quarantine rule applicable to anyone arriving from both cities.

The use of remote technology in legal proceedings has had varying degrees of success. The videoconferencing system used in the courts, prisons, pre-trial detention facilities systems and managed by the Judicial Department has been in place for some years and is working well. The pandemic has been a driver for the Judicial Department to integrate its videoconferencing facilities with Gosuslugi, the federal e-government system. The same cannot be said for improvised solutions such as Skype or WhatsApp (the first hearing on WhatsApp took place on 1 April 2020 in Yekaterinburg). These systems have proved unpredictable and in one case in Kemerovo the connection was so poor that the defendant was unable to understand that he had been appointed a court lawyer.

Such quick and fast solutions and 'trial by Zoom' may well help to ensure that the wheels of justice roll on, but the Government of Russia should give careful thought to how these measures are embedded in the medium to longer term.

The principle of 'open court' whereby the media, civil society and the general public may attend is fundamental to a fair trial. Such measures are important for transparency, accountability and the wider Rule of Law. Unfortunately, trials continue to be heard without the public in attendance. Requests by numerous human rights organisations to organise video translations of court hearings (at least in the

93 The courts in Moscow held almost 400 pre-trial detention hearings from 19 March 2020 to 3 April 2020; from 19 March 2020 to 3 April 2020 there were 119 hearings on the merits of criminal cases as compared to 774 in February. See Kommersant, Судопроизводство непрерывного цикла, 7 April 2020 - <https://www.kommersant.ru/doc/4315871>

94 Article 6.3 (d), ECHR; Article 14.3 (e) ICCPR

95 Human Rights Committee, General Comment 32 on Art 14, ICCPR para 39. CCPR/C/GC/32, 23 August 2007; Article 6, ECHR; UN Basic Principles on the Role of Lawyers, 1990 - <https://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfLawyers.aspx>

96 Human Rights Committee, General Comment 32 on Art 14, ICCPR para 39. CCPR/C/GC/32, 23 August 2007, para 34

cases of Prokopieva, Shevchenko, Man and Law NGO and the Yaroslavi torture case) have been refused on the grounds of lack of equipment, licenses and a leased internet line.⁹⁷

f. Impact on the Right to Privacy

There is no doubt that the pandemic has posed a great challenge to privacy rights. Data is of significant value to health services globally as they fight the pandemic but placing large amounts of information in the hands of government comes with attendant human rights risks. Technology and mobile data such as contact tracing apps, facial recognition technology and geolocation tools are being used as a way to contain the spread of the virus but may also be used inappropriately. Data may also be retained when it is neither necessary nor proportionate. There is a real risk that such tools may be used in a repressive or abusive way by the authorities and, in light of this, data should be protected accordingly.⁹⁸

The right to privacy is protected in various international human rights instruments including the Universal Declaration of Human Rights, the European Charter of Fundamental Rights and the ECHR.⁹⁹ The European Court of Human Rights has noted that the protection of personal data is of fundamental importance to a person's enjoyment of his or her rights under Article 8 of the ECHR.¹⁰⁰ States may interfere with this right for a particular reason (including to protect health or morals) but may only do so when such actions are lawful, necessary and proportionate.¹⁰¹

In response to the pandemic, Russia has deployed a variety of tools to contain the spread of the virus including issuing "digital passes" to move around cities, a "Social Monitoring" app and extensive use of CCTV cameras and facial recognition technology. Such measures present serious human rights concerns and are worrying incursions on the right to privacy.

The "Digital Pass" system:

The authorities instituted a "digital lockdown" through a system of "electronic passes" to enable individuals to leave their homes. The system was implemented in 11 of 85 regions in the country. Passes were required to justify leaving one's place of residence for a legitimate purpose, such as attending a court hearing, medical appointment, or attending a funeral, like stipulated in regional regulations. In Moscow, passes were not required for walking to the nearest grocery store or walking a pet but had to be obtained for any travel on public transportation (public, private or taxis). Users were obliged to provide personal information including full name, address and passport number to a dedicated resource and, on doing so, received a QR code in response which could be shown to the police if stopped.

The systems have varied across the country in terms of their restrictive nature; in Nizhny Novgorod Region citizens were required to apply for a QR code (through a website, special app or phone call) whenever they were planning to leave home for any reason, including grocery shopping (3 hours), walking a pet (1 hour) or disposing of garbage (30 minutes). This was not however the case in Moscow

97 <https://t.me/yardelo/1230>

98 Gardel v France, para 62 – app no 16428/05, 17 March 2010

99 Article 12 of the UDHR, Article 8 of the ECHR provides for the right to respect for one's "private and family life, his home and correspondence". See also: Article 7 of the European Charter of Fundamental Rights

100 Satukunnan Markkinaporssi Oy and Satamedia Oy v Finland Application no. 931/13, 27 June 2017

101 Article 8(2), ECHR

which had less oppressive restrictions as mentioned above.¹⁰² In Moscow, some 3.2 million people had applied for passes within the first 24 hours prior to the system becoming mandatory on 15 April 2020.

“Social Monitoring”

In a further bid to manage the pandemic in Moscow and with a growing number of cases (53,000 infections and 537 official deaths nationwide by 21 April 2020 and 29,433 infections and 433 deaths in Moscow), the mayor issued a new decree on 21 April 2020, which extended the requirement of strict mandatory quarantine to a much larger group of individuals to include anyone with any symptoms of a viral respiratory infection (as diagnosed by a medical worker).¹⁰³ All individuals were required to provide their personal information, including the quarantine address and sign an acknowledgement form (informed consent) obliging them to remain at that address for two weeks (if tested negative) or until they tested negative. Under the new decree, co-habitants were obliged to stay at home as well but were allowed to shop for groceries, walk pets etc.

In early April 2020, the Moscow I.T. department rolled out a mandatory tracking app, Social Monitoring, to ensure that COVID-19 patients complied with self-confinement measures. The app automatically tracks users' locations (via GPS) in order to monitor whether they have left home. Users are sent push notifications at random times demanding a 'selfie' to prove that they are at home. Failure to download the app or send a selfie within an hour of request incurs an automatic fine of RUR 4000 (50 EUR).

The app has proved to be very controversial and has been heavily criticised in terms of its functionality and intrusive nature (i.e. by requesting access to call histories, heart rate monitor, camera and location details).

Unsurprisingly, the app has been plagued with technical difficulties. It is glitchy and freezes during installation or when sending selfie photos. More worryingly, there are numerous reports of fines being issued erroneously to patients who had not left their home due to inaccurate geolocation data or had to travel to hospital (not in itself a violation of quarantine).

By 26 May 2020, 54 000 “violations” (fines) had been imposed for the total amount of 216 mln RUR (2,63 mln EUR)¹⁰⁴. Fines are issued automatically by “orders” from the Moscow Control Department (responsible for the enforcement of city laws but without any policing powers) and can be challenged before the Department itself or through a court.¹⁰⁵ In light of the system's vagaries and the wrongful convictions, the head of the Presidential Human Rights Council, Valery Fadeyev, appealed to the Moscow Government on 26 May 2020 with a proposal to quash all the fines imposed by the system to date.

Several thousand complaints have been filed with the Moscow City court but are yet to be adjudicated. In addition, four legal actions are pending, challenging the procedure for the automatic imposition of fines for alleged violations under the Moscow Code (as amended on 1 April 2020) and to the decree introducing the “digital pass” regime.

102 The Digital Pass system was introduced in Moscow by decree No. 43-UM of 11 April 2020 (effective as from 15 April 2020).

103 No 47-UM of April 21, 2020

104 Vedomosti, Пользователям «Социального мониторинга» выписали штрафов более чем на 200 млн рублей, 20 May 2020 - <https://www.vedomosti.ru/technology/articles/2020/05/20/830668-sotsialnii-monitorng>

105 On 20 May 2020, the Mayor's website added a page with instructions on how and where to challenge a fine including the option to do so online if challenging it before the Control Department.

CCTV cameras & Facial recognition technology:

Since the start of the pandemic, the authorities in Moscow have used surveillance technology to track individuals' whereabouts via both CCTV cameras in residential building entrances and traffic cameras (ordinarily used for traffic violations). In mid-April, the authorities started to use traffic cameras to track vehicles belonging to people without a "digital pass". The "CCTV-estate" is enormous and includes 102,000 cameras in building entrances and over 24,000 in courtyards. According to reports, the public were made aware of the capabilities of CCTV cameras to capture data but were not given full details.

There are questions about the destination and retention of data retrieved from CCTV footage. Recordings are ordinarily kept for five calendar days, but further copies may be retained for a particular day and time in case of an incident. In addition, access to copies may only be provided to law enforcement officials, judges or lawyers. However, permanent access to these recordings is available to "federal executives, the Mayor of Moscow and officials authorized by the Mayor, as well as the City of Moscow state agencies. This access should be for the purposes of executing their powers within their competence," as stipulated in a decree issued by the mayor on 21 April 2020 authorizing the use of technology to monitor citizens' movements.¹⁰⁶ The terms of the decree are broad in scope and give the authorities a wide discretion in using technology to monitor individuals' movement, which may arguably include access to data.

In addition, the Government of Russia has been expanding its use of surveillance through cameras equipped with facial recognition technology. According to reports, the system has already captured 200 people violating quarantine rules via these cameras.¹⁰⁷ There is currently a challenge before the European Court of Human Rights on the use of facial recognition technology in Russia.¹⁰⁸

Informed consent:

Both the "digital pass" system and the "Social Monitoring" app require users to provide their express consent to processing of their personal data. In the latter case, this is evidenced by a signature. Users who fail to agree to this clause are automatically and involuntarily sent to an "observatory" or hospital for quarantine and/or treatment.

There have been numerous complaints that the acceptance form is lengthy, typed in small script, in complex language and with no explanation given as to the obligations therein. The form gives users the option to revoke their consent, but this constitutes a refusal to use the app and, as such, incurs a fine.

The data processing consent clause states that it is valid until the end of the "isolation period" (i.e. the period for which the subject is required to remain in isolation) but there have been instances of failure to unregister and of fines imposed for failing to send a selfie after the isolation period had expired.

106 No 47-UM of 21 April 2020; the decree provides that "in order to exercise control over compliance with the self-isolation regime at home, as prescribed by medical organisations...or according to decisions by sanitarians, technologies are to be used for electronic monitoring of a citizens' presence in a certain geolocation, including the use of technical devices and/or software"

107 Human Rights Watch, Moscow Silently Expands Surveillance of Citizens, 25 March 2020 - <https://www.hrw.org/news/2020/03/25/moscow-silently-expands-surveillance-citizens>

108 TASS, 'ECHR receives first complaint about facial recognition system in Moscow', 6 July 2020 - <https://tass.com/society/1175141>

The use of data collected through the “Digital Pass” and “Social Monitoring” app appears to be unregulated even at the regional level and there is lack of clarity around data retention. Mayor Sobyenin said on 4 June 2020 that “All social monitoring and [digital] pass data will be destroyed. Its use is only possible in emergency situations. In normal life it may be viewed as and, in essence, is a violation of people’s rights.”¹⁰⁹

On June 8 2020, the Moscow Department of Information Technologies confirmed that the data would be destroyed “within the period established by the federal law On Personal Data”.¹¹⁰ This legislation prescribes the period for data destruction, “when the goal of processing personal data is achieved, the operator is obliged to stop processing...and destroy personal data...within the period not exceeding 30 days from the time when [such] goal was achieved.” This would suggest that data on the “Social Monitoring” app would be destroyed 30 days after the user’s self-isolation ends.

There have been several isolated incidents of data breaches during the reporting period. In one case, a Facebook user reported that data related to 8000 patients’ anti-body tests and names (held by state run clinics) was stored in an open Google document without any protection.¹¹¹

The deeply invasive nature of both apps and other technology raises questions around the balance to be struck between privacy rights on the one hand and the right to protect the public health of the nation on the other. The use of Artificial Intelligence is a valuable tool in times of a health emergency but it must be used responsibly. In such cases, it is vitally important that robust safeguards are in place to protect the individual user’s data which are transparent and in line with human rights standards.

g. Impact on Freedom of Peaceful Assembly¹¹²

Protest in the time of pandemic has become an acutely challenging issue for many States as they hastily seek to limit mass gatherings on public health grounds. Whilst the public health imperative is a lawful one under international human rights law, it nevertheless presents an incursion on this important fundamental freedom.

The right to peaceful assembly stands at the cornerstone of democracy protecting the rights of individuals and groups to meet and engage in inter alia peaceful protest. Both the right to freedom of peaceful assembly and association are contained in international and regional human rights instruments.¹¹³ Under the ECHR, the government may restrict the right where it is “necessary in a democratic society” and on limited grounds (including the protection of health). Any restrictions must be strictly necessary, proportionate, time limited, lawful and subject to review; nor may measures be arbitrary or discriminatory. In terms of positive obligations, states should facilitate and protect peaceful protests and only use force when absolutely necessary and to the extent required to carry out their legitimate duties.¹¹⁴

109 RBC, Собынин пообещал уничтожить данные системы цифровых пропусков [Sobyenin promised to destroy the data collected by the digital pass system], 4 June 2020 - <https://www.rbc.ru/society/04/06/2020/5ed87f7c9a79475ac3e55e64>

110 No. 152-FZ of 27 July 2006, as amended

111 <https://www.facebook.com/ekaterina.pomerantseva/posts/3388783347806881>

112 OVD-Info: Freedom of assembly in Russia during the pandemic – What happened from 10 March to 22 April 2020 Natalia Smirnova, Denis Shedov - <https://ovdinfo.org/reports/freedom-assembly-russia-during-pandemic#1>

113 Article 11, ECHR; Article 21, ICCPR; Article 20(1) UDHR Under Article 11, the right covers both private meetings and meetings in public places, whether static or in the form of a procession.

114 See: UN Code of Conduct for Law Enforcement Officials (1979) and the UN Basic Principles on the Use of Force and Firearms (1990) <https://www.ohchr.org/en/professionalinterest/pages/useofforceandfirearms.aspx>

The Government of Russia has acted swiftly to restrict public events and mass gatherings at both the federal and regional level. On 10 March 2020, the mayor of Moscow banned all public events with more than 5,000 participants; similar measures were adopted within a few days in the Moscow Region,¹¹⁵ St Petersburg¹¹⁶ and Leningrad Region.¹¹⁷ On 13 March 2020, the Chief State Sanitary Doctor called for “mass gatherings” to be restricted and measures were imposed accordingly.¹¹⁸ On 23 March 2020, the mayor of Moscow banned all public events regardless of the number of their participants until 10 April 2020. Later, it was repeatedly extended through 14 June 2020.¹¹⁹ There has been some confusion around the interpretation of the decision of the Chief State Sanitary Doctor and authorities have failed to understand the clear legal distinction between “mass gatherings” and “public events”.¹²⁰

Restrictions have also been extended to “single-person pickets” which pose no threat to public health and do not require authorization under Russian law.¹²¹ Journalists, activists and district council representatives have been detained under these measures. At the end of May 2020, Moscow police detained seven journalists and a writer who were holding peaceful single-person pickets in solidarity with other detained journalists.¹²² They were charged with participating in an unsanctioned public gathering and accused of violating a Mayoral order banning “public and other mass gatherings.”¹²³ The detentions have been condemned by the OSCE Representative on Media Freedom and the Council of Europe Commissioner for Human Rights.¹²⁴

By the end of March 2020, all public events were banned in 45 out of 85 Russian regions. Of note, no legislation mentioned single person pickets. Single-person pickets were specifically treated as “public events” by the police and interpreted as “mass gatherings”. Thereafter, following the lockdown

115 Постановление Губернатора Московской области от 12.03.2020 № 108-ПГ «О введении в Московской области режима повышенной готовности для органов управления и сил Московской областной системы предупреждения и ликвидации чрезвычайных ситуаций и некоторых мерах по предотвращению распространения новой коронавирусной инфекции (2019-nCoV) на территории Московской области» - <https://mosreg.ru/dokumenty/normotvorchestvo/prinyato-gubernatorom/postanovleniya/12-03-2020-16-59-52-postanovlenie-gubernatora-moskovskoy-oblasti-ot>

116 Постановление Правительства Санкт-Петербурга от 18.03.2020 № 127 «О внесении изменений в постановление Правительства Санкт-Петербурга от 13.03.2020 №121» - <https://npa.gov.spb.ru/SpbGovSearch/Document/37545.html>

117 Постановление Правительства Ленинградской области от 19.03.2020 № 131 «О внесении изменений в Постановление Правительства Ленинградской области от 13.03.2020 № 117 “О введении на территории Ленинградской области режима повышенной готовности для органов управления и сил Ленинградской областной подсистемы РСЧС и некоторых мерах по предотвращению распространения новой коронавирусной инфекции (2019-nCoV) на территории Ленинградской области”» - https://pub-sed.lenreg.ru/publishing/Content/Cache/6529_images.pdf

118 Постановление Главного государственного санитарного врача Российской Федерации от 13.03.2020 № 6 «О дополнительных мерах по снижению рисков распространения COVID-2019» - <http://publication.pravo.gov.ru/Document/View/0001202003170005>

119 <https://rg.ru/2020/03/23/moscow-ukaz26-reg-dok.html>

120 The decision of the Chief Sanitary Doctor called for the restriction on “mass gatherings”; “public events” cannot be formally classified as a “mass gathering” but restrictions were extended to these meetings as well.

121 Single-person pickets do not constitute a “gathering” and Russian law does not require authorisation to hold a single person picket; these pickets were lawful during the “Digital pass” regime in April and May. In practice, however, these pickets were regularly treated as violations during the “high alert” regime in Moscow and St Petersburg

122 Human Rights Watch, Russia: Journalists Held Over Peaceful Pickets, 29 May 2020 - <https://www.hrw.org/news/2020/05/29/russia-journalists-held-over-peaceful-pickets>

123 Resolution adopted on May 7 2020 and effective in late May (banning mass gatherings until May 31 2020): <https://rg.ru/2020/05/07/moscow-ukaz55-reg-dok.html>

124 OSCE Representative on Media Freedom - https://twitter.com/OSCE_RFoM/status/1266032449341009920

imposition (and administrative measures for their violations) in many of the regions, any gathering was banned regardless of its purpose.

The restrictions to peaceful assembly have been applied differently and inconsistently across the country during the reporting period. Certain protests were allowed to go ahead unimpeded whilst others, such as a demonstration in Moscow against the “Constitutional reset” planned for March 22 2020, were not approved, with no alternative date or time offered to the organisers.¹²⁵ In that particular case, the numbers of attendees fell within the limit of under 5 000 people, legally prescribed at that time, but was not given approval by the Mayor. In other instances, protests have been cancelled despite prior approval by the authorities as was the case of a proposed demonstration in Voronezh relating to changes to the Constitution.¹²⁶ Further still, the authorities have asked protesters to reduce the size of demonstrations.

The police have detained individuals at public events outside Moscow including those protesting against the self-quarantine regime and on another occasion at an “open microphone” event about the situation in Buryatia.¹²⁷

Human rights groups report that trials in relation to freedom of assembly are slow moving or have been postponed indefinitely. In some instances, cases are not being treated as urgent despite falling within the criteria set down by Supreme Court guidance.¹²⁸ According to OVD-Info, there were almost 200 “administrative prosecutions” instigated in Russia in April and May 2020 against protestors for alleged violations of “anti-COVID” measures.

As of mid-June 2020, one mass public protest had taken place during the period covered by this report in Vladikavkaz, capital of North Ossetia in the North Caucasus. The protest, on 21 April 2020, attracted 1500 people who were demanding an end to lockdown, financial support for job losses and resignations of government officials. According to reports, the rally was dispersed by force and 69 people were detained. More than 60 people were later sentenced to “administrative arrest” of up to 15 days for “failure to comply with lawful demands of police officers.” At the time of writing, 20 people are facing criminal charges for “violence against police officers” and “hooliganism.” Ten people are in jail pending trial. The treatment of protestors at the demonstration was reported to be rough, although no major incidents occurred. There have been subsequent mass protests in other cities including:

- St Petersburg – 1 July 2020 to protest against constitutional amendments;
- Khabarovsk – as from 11 July 2020 to present – mass rallies almost daily to protest against the arrest of the local governor;
- Vladivostok – 17-19 July 2020 to protest against the arrest of the local governor;
- Moscow – 12 July 2020 – gathering at a pre-trial detention facility to “protest” (wearing branded t-shirts) against the arrest and treason charges against the journalist, Ivan Safronov
- Moscow – 15 June, 1 July 2020 to protest against constitutional amendments.

125 Novaya Gazeta, Московские власти не согласовали еще один митинг против изменения Конституции, 13 March 2020 - <https://novayagazeta.ru/news/2020/03/13/159769-moskovskie-vlasti-ne-soglasovali-esche-odin-miting-protiv-izmeneniya-konstitutsii>

126 OVD-Info: Freedom of assembly in Russia during the pandemic – What happened from 10 March to 22 April 2020 Natalia Smirnova, Denis Shedov - <https://ovdinfo.org/reports/freedom-assembly-russia-during-pandemic#1>

127 OVD-Info: Freedom of assembly in Russia during the pandemic – What happened from 10 March to 22 April 2020 Natalia Smirnova, Denis Shedov - <https://ovdinfo.org/reports/freedom-assembly-russia-during-pandemic#1>

128 Постановление Президиума Верховного Суда Российской Федерации и Президиума Совета судей Российской Федерации от 8 апреля 2020 г., пара. 3 - <http://www.supcourt.ru/files/28837/>

A number of individuals at the Vladikavkaz demonstration were well-known journalists and bloggers. The major organizer Vadim Cheldiyev, a popular v-logger, opera singer and “COVID dissident,” was detained for two months in St Petersburg a few days before the rally, and is facing additional criminal charges, including “spreading false information” and, more importantly, “public excitement of extremism” which carries a sentence of up to five years.¹²⁹

More worryingly, the restrictions on public events and mass gatherings fail to provide any expiration date or sunset clause. Instead, vague language such as “until further notice” or “depending on the development of the situation” has been deployed which raises concerns around legal certainty and opens the door for future abuse.

The restrictive measures imposed by the Government of Russia have severely impinged the right to peaceful assembly and there are serious questions as to whether they are being applied in a proportionate, lawful and non-discriminatory way.

h. Impact on Freedom of Expression/Access to Information

The advent of COVID-19 has cast a long shadow over freedom of expression rights with many countries imposing “fake news” laws in a bid to counter the spread of false and misleading information about the virus. However, these laws are often used as a pretext to clamp down more widely and silence critical voices in a repressive and arbitrary fashion.¹³⁰

The right to freedom of expression is enshrined in international and regional human rights instruments and is the lifeblood in any free society.¹³¹ It is through this right that individuals and groups can share, exchange and debate ideas to help build strong and thriving democracies. The right is broad in scope encompassing freedom of the media and the right to seek, receive and impart information. Again, like other fundamental freedoms, it is not absolute and may be restricted on certain grounds (including public health). Any restrictions should be lawful, proportionate and necessary in a democratic society.

Fake news:

The Government of Russia is no stranger to using legislation as a tool against political opponents and government critics. In 2019, the Government criminalised the “dissemination of knowingly false publicly significant information” that “threatened life or health of citizens, property, public order”.¹³² This legislation was used against human rights activists, environmentalists and media outlets.

129 Radio Free Europe/Radio Liberty, Opera Singer arrested for initiating anti-government rallies in Russia’s North Ossetia, 21 April 2020 - <https://www.rferl.org/a/opera-singer-cheldiyev-arrested-for-initiating-anti-government-rallies-in-russia-s-north-ossetia/30567646.html>

130 See Article 19, Viral Lies: Misinformation and the Coronavirus, March 2020 - <https://www.article19.org/wp-content/uploads/2020/03/Coronavirus-final.pdf>

131 Article 10, ECHR; Article 19, UDHR

132 Article 13.5, paras 9, 10, 11 of the Code of Administrative Offences - http://www.consultant.ru/document/Cons_doc_LAW_34661/82c0a663173b440cc9b027bc8e687dc9e36e71ad/

In terms of COVID-19, the Government took prompt action to legislate against “fake news,” a measure that has come under sharp criticism from human rights groups.¹³³ On 31 March, 2020 the State Duma issued a raft of amendments (“anti-virus” laws) to the existing Criminal Code and Code of Administrative Offences; these amendments saw the introduction of criminal penalties for “public dissemination of knowingly false information” in the context of emergencies. The amendments to the Criminal Code supplement provisions relating to crimes against public security (including terrorism) which gives a strong indicator as to the way in which the authorities perceive these offences.¹³⁴

The offence of disseminating “fake news” carries a fine of up to 700 000 RUR (EUR 8 200), imposes community service or “restrictions on freedom” for up to 3 years¹³⁵ Further, if the actions result in actual harm to health or death, the penalty increases to five years’ imprisonment, community service or a higher fine of up to 2 million RUR (EUR 23 500).¹³⁶

At the same time, the Federal Code was amended to criminalise the actions of “legal entities” (including media outlets) disseminating “fake news.”¹³⁷ Such offences attract fines of 3 million RUR (EUR 35 000) or 5 million RUR (almost EUR 60 000) in the event of dangerous consequences.

The first criminal case under the new “anti-virus” laws was filed just two days after it came into force, in connection with the publication of a post in a Vkontakte group called “Sestroretsk News.” The post claimed that a COVID-19 patient was sent home from a local clinic by public transport. As of 9 June 2020, some 38 cases had been prosecuted under Article 207.1 of the Criminal Code in 21 regions of the country. Criminal proceedings have also been instituted against prisoners’ rights activists and groups who claim (in publications) that measures to manage the pandemic in prison are insufficient. Similarly, criminal proceedings have been instituted against bloggers and members of opposition political groups.

There are no official statistics in relation to the number of prosecutions under Article 13.15 of the Code of Administrative Offences but independent monitors identified 170 prosecutions across 53 regions (these cases have been either covered in the media or made it to the courts).¹³⁸ As at 10 June 2020, 46 cases had resulted in sentences with fines totalling more than 1 million RUR.

According to the 2020 World Press Freedom Index, Russia is ranked 149th in the world.¹³⁹ In a country with a state-controlled media, there is very little space for an independent press. It is under this hugely challenging climate that journalists operate. Since the health crisis began, journalists have been targeted,

133 Agora International Human Rights Group, The fake news ‘infodemic’: the fight against coronavirus as a threat to freedom of speech, https://agora.legal/fs/a_delo2doc/196_file__ENG_final.pdf

134 Article 207.1, Criminal Code – http://www.consultant.ru/document/cons_doc_LAW_10699/9d8a5b6501a01da934c1bbd0ca9b1fd46df76a72/

135 Article 207.1 of the Criminal Code makes it a criminal offence to “publicly disseminate disguised as truthful knowingly false information about circumstances threatening the life and safety of citizens and/or measures to ensure safety of the populace and areas, of ways and methods of protection from such circumstances” See: http://www.consultant.ru/document/cons_doc_LAW_10699/9d8a5b6501a01da934c1bbd0ca9b1fd46df76a72/ Restriction on freedom is a non-custodial punishment ranging from curfews to prohibition on attending public events. At a minimum, it prohibits an individual from leaving their locality without special permission and an obligation to regularly report to the probation authorities.

136 Article 207.2 – http://www.consultant.ru/document/cons_doc_LAW_10699/7dcac8801f9fa5415250803c6d4bc4366bb91f1b/

137 Article 13.15, Code of Administrative Offices – http://www.consultant.ru/document/cons_doc_LAW_34661/82c0a663173b440cc9b027bc8e687dc9e36e71ad/

138 Agora International Human Rights Group, The fake news ‘infodemic’: the fight against coronavirus as a threat to freedom of speech, https://agora.legal/fs/a_delo2doc/196_file__ENG_final.pdf

139 Reporters Without Borders, World Press Freedom Index, 2020 <https://rsf.org/en/russia>

investigated and detained under the new laws and in one high profile case, a prominent journalist and Moscow district councillor, was sentenced to 15 days of administrative detention for holding a single person picket outside the Moscow police headquarters.¹⁴⁰ The government has taken swift action against journalists and media outlets who criticise its handling of the pandemic.¹⁴¹ At the end of April 2020, a group of regional independent media published an open letter protesting against the new laws and claimed that the pandemic had been used as a tool to pressure journalists.¹⁴²

Internet freedom in Russia has seen a serious decline in recent years as the government seeks to tighten its grip on freedom of speech and access to information. During the pandemic, the government has used the “fake news” legislation against healthcare workers who have spoken out against inadequate and unsafe working conditions.¹⁴³ A doctor in Sochi was charged with “spreading false information” for posting a video on social media about the lack of PPE.¹⁴⁴

In terms of access to information, the Government has used TV, internet, social media, text messages and mobile networks to spread public messages about COVID-19. Internet usage is high in Russia with an 80% uptake among the adult population. The figure is closer to 100% for the under 50-year olds.¹⁴⁵ The authorities went to special efforts to provide COVID-19 related information to remote communities in Udmurtia by using drones.

It appears that no efforts have been made to translate public health material into minority languages, but this does not present a serious challenge as the majority of the population are Russian speakers, including most migrants in big cities.

The level of trust in television as a reliable source of information is low and has shrunk from 93% in 2009 to 73% in 2020; for traditional newspapers and radio, from 40% to about 15% but it has grown for internet media (6 per cent to 39%) and social media (6%to 39%).¹⁴⁶

The “fake news” legislation is concerning on a number of human rights grounds. Criminal prosecutions have, for the most part, been used against critical voices and government opponents including activists, journalists, bloggers and politicians (some 17 out of 42 prosecutions are connected to statements made by these individuals) clearly indicating a political agenda on the part of the authorities.¹⁴⁷ Conversely, there have been no reports of government officials being held liable for disseminating false information. In addition, the language of the legislation is overly broad and vague rendering it open to abuse. Critics

140 Rights in Russia, Moscow PEN Centre and the Free Word association demand the immediate release of Ilya Azar, 29 May 2020 <https://www.rightsinrussia.org/ilya-azar/>

141 International Press Institute, New ‘fake news’ law stifles independent reporting in Russia on COVID-19, 8 May 2020 <https://ipi.media/new-fake-news-law-stifles-independent-reporting-in-russia-on-covid-19/>

142 Tayga.Info, «Эпидемию используют для давления на журналистов». Обращение независимых СМИ, 28 April 2020 - <https://tayga.info/154432>

143 Human Rights Watch, Russia: Health Workers Face Retaliation for Speaking Out, 15 June 2020 - <https://www.hrw.org/news/2020/06/15/russia-health-workers-face-retaliation-speaking-out>

144 Novaya Gazeta, На главу кубанского «Альянса врачей» составили протокол о фейке из-за видео с просьбой выдать средства защиты, 7 May 2020 - <https://novayagazeta.ru/news/2020/05/07/161300-na-glavu-kubanskogo-alyansa-vrachej-sostavili-protokol-o-feykah-iz-za-video-s-prosboy-vydat-sredstva-zaschity>

145 https://www.rbc.ru/technology_and_media/13/01/2020/5e1876549a7947210b5ef636

146 <https://www.levada.ru/2020/02/27/istochniki-novostej-i-doverie-smi/>

147 Agora International Human Rights Group, The fake news ‘infodemic’: the fight against coronavirus as a threat to freedom of speech, 15 June 2020 - <https://www.agora.legal/articles/Doklad-Mezhdunarodnoi-Agory-«Epidemiya-feikov-borba-s-koronavirusom-kak/30>

also note that the same action can be prosecuted under several legal frameworks, i.e. as a criminal or administrative offence, and lacks proper safeguards in terms of time limits or judicial oversight.¹⁴⁸

i. Impact on the Right to Equality and Prohibition on Discrimination

The pandemic has exposed inequalities and discrimination faced by a number of vulnerable groups in society. Whilst international human rights law provides for the enjoyment of human rights on the basis of equality and non-discrimination, the evidence shows that certain groups have fared worse than others during the pandemic and have effectively been 'left behind' in terms of government protection.¹⁴⁹ Under the ECHR, States are under a positive obligation to take measures to prevent, stop or punish discrimination.¹⁵⁰ This can include the adoption of "positive measures" in some instances.¹⁵¹

I WOMEN

COVID-19 has had a far-reaching and disproportionate impact on women and girls in every sphere ranging from health and access to healthcare, the economy, reproductive rights, employment to the risk of sexual and gender-based violence. Women's rights are protected in the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) to which Russia is a State party.¹⁵² The Committee on the Elimination of Discrimination against Women has called on States to uphold the rights of women and girls during the pandemic¹⁵³

Since the start of the health emergency, there has been much talk of a "shadow pandemic" of domestic abuse. The imposition of stay-at-home orders has forced many women and girls into lockdown with their abusers (be it an intimate partner, family member or carer) as they find themselves at greater risk of domestic, sexual, economic, psychological and other forms of gender-based violence. The UN has estimated that six months of lockdown could result in 31 million more domestic abuse cases worldwide.¹⁵⁴

148 Agora International Human Rights Group, The fake news 'infodemic': the fight against coronavirus as a threat to freedom of speech, 15 June 2020 - <https://www.agora.legal/articles/Doklad-Mezhdunarodnoi-Agory-«Epidemiya-feikov-borba-s-koronavirusom-kak/30>

149 Article 14 of the ECHR and Protocol 12 which introduced a free-standing right of non-discrimination and expands the scope of prohibition of discrimination to the enjoyment of any right, including rights under national law; Article 2, UDHR; Articles 2 and 26, ICCPR; Article 2(2), ICESCR; Article 2, UN Convention on the Elimination of All Forms of Discrimination against Women 1979; UN International Convention on the Elimination of All Forms of Racial Discrimination 1969 CERD ; see also, openDemocracy, 'Governments must ensure non-discrimination in pandemic responses', 20 May 2020 - <https://www.opendemocracy.net/en/opendemocracyuk/governments-must-ensure-non-discrimination-in-pandemic-responses/>

150 Pla and Puncernau v Andorra Application no 69498/01, 13 July 2004

151 Horvath and Kiss v Hungary, Application no 11146/11, 29 January 2013

152 CEDAW convention - <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx>

153 CEDAW (ref); See Guidance Note on CEDAW and COVID-19 -<https://www.ohchr.org/EN/HRBodies/CEDAW/Pages/CEDAWIndex.aspx>; CEDAW –

154 UNFPA, Impact of the COVID-19 Pandemic on Family Planning and Ending Gender Based Violence, Female Genital Mutilation and Child Marriage, 27 April 2020 - https://www.unfpa.org/sites/default/files/resource-pdf/COVID-19_impact_brief_for_UNFPA_24_April_2020_1.pdf

Incidences of domestic abuse in Russia have more than doubled during the pandemic with some 13,000 women calling domestic abuse hotlines in April 2020 compared with 6,054 in March 2020.¹⁵⁵ Women's rights groups lobbied the government (at both the federal and regional level) in April 2020 calling for urgent measures to be put in place to protect survivors of domestic abuse. Measures included the provision of additional capacity in shelters, training law enforcement officials, information on available support and the creation of a coordination and response centre.¹⁵⁶ This request was echoed by the Russian Ombudsperson/Human Rights Commissioner, Tatiana Moskalkova, who called on the authorities to allow victims of domestic abuse to leave their homes without the "digital pass."¹⁵⁷ In a positive step, the Vice Prime Minister, Tatiana Golikova, instructed heads of several ministries in May 2020 to look into this issue and suggest appropriate steps accordingly.¹⁵⁸ A draft law on domestic abuse (published by the Federation Council in November 2019) is currently on hold and will be reviewed post-pandemic.¹⁵⁹

Shelters for survivors of domestic abuse provide a safe haven for many women. In mid-April 2020 many shelters were forced to go into quarantine (either on their own initiative or by government decree as in St Petersburg) and close their doors to new applicants and limit their services to online counselling.¹⁶⁰ State operated shelters in Moscow have been operating normally.

The Russian authorities assert that the police are taking the requisite action to protect survivors of domestic abuse by responding to calls, visiting families with a history of violence and informing victims of support services. In particular, the authorities have indicated that they will not prosecute anyone who breaches quarantine rules on the grounds of duress.¹⁶¹

In fact, the Russian authorities have failed to provide sufficient information to survivors of domestic abuse. The Russian e-government portal, Gosuslugi, first featured a page on domestic abuse on 18 June 2020 with very basic information but failed to provide contact details for existing crisis centres or other services.¹⁶² The Moscow government has put together more helpful resources on domestic abuse.¹⁶³ In the absence of government action, specialized NGOs have taken it upon themselves to increase awareness and provide information and counselling. An NGO, Zona Prava has opened a legal hotline with WhatsApp and Telegram options whilst another project, #TiNeOдна (YouAreNotAlone) launched

155 The Moscow Times, Domestic Abuse in Russia Doubles Amid Virus Lockdown: Official, 5 May 2020 <https://www.themoscowtimes.com/2020/05/05/domestic-abuse-in-russia-doubles-amid-virus-lockdown-official-a70186>

156 Open letter from women's rights NGO's: Kommersant, Домашнее насилие становится заразным, 2 April 2020 - <https://www.kommersant.ru/doc/4310901>

157 Statement by Russian Human Rights Commissioner, 5 May 2020 <https://www.rbc.ru/rbcfreenews/5eb11af79a794769616c8c48>

158 RBK, Голикова поручила МВД разобраться с домашним насилием на изоляции, 7 May 2020 - <https://www.rbc.ru/society/07/05/2020/5eb3da4a9a7947f971cd1523>

159 Federation Council, Проект закона о профилактике семейно-бытового насилия, 29 November 2019 - <http://council.gov.ru/services/discussions/themes/110611/>

160 Mediazona, Изоляция с агрессором. Что происходит с жертвами домашнего насилия во время карантина, 10 April 2020 - <https://zona.media/article/2020/04/10/quarantineviolence>

161 Kommersant, Жертв домашнего насилия не будут обвинять в нарушении карантина, 26 May 2020 - <https://www.kommersant.ru/doc/4357087>

162 https://www.gosuslugi.ru/domestic_abuse

163 Если дома назревает кризис... - <https://ya-doma.ru/crisis/>

a Viber Chatbot to help victims find support quickly and anonymously.¹⁶⁴ Whilst these efforts are to be commended, it should not fall on civil society organisations to act as ‘stand in’ in the absence of a meaningful governmental response.

COVID-19 has also had an adverse impact on women’s right to healthcare and reproductive rights, all of which are protected under international human rights law. In terms of reproductive health, there are some reports that clinics are refusing to provide women with free abortions that have been deemed to be a “non-life-threatening situation.”¹⁶⁵ Women and girls have the right to access safe abortion services, even in the time of a pandemic.¹⁶⁶ In Moscow, the city public health department claimed that only one hospital stopped providing abortions due to repurposing it for COVID-19 patients.¹⁶⁷

Maternity hospitals and wards have been quarantined and/or repurposed for COVID-19 patients, which has put a significant strain on the system. Those maternity hospitals that remain operational have been divided into “green” and “red” zones and are often overcrowded, with more patients in rooms and queues in corridors. Women who planned their delivery in advance (even on a “commercial” basis) have had to change their plans.¹⁶⁸ Women who tested positive for COVID-19 have been separated from their children and kept in isolation for two weeks.

Whilst the Government of Russia has taken incremental steps to protect women and girls during the pandemic, it is critical that it takes swift action to meet its obligations under human rights law and to ensure a gender sensitive response to the pandemic.

II PEOPLE LIVING WITH DISABILITIES & OLDER PEOPLE¹⁶⁹

According to the World Bank, some 15% of the world’s population (one billion people) live with some form of disability.¹⁷⁰ People with disabilities are at heightened risk of contracting COVID-19 given challenges such as adhering to social distancing measures, reliance on physical contact with care workers/support persons and applying hygiene measures such as handwashing. The rights of people with disabilities are protected under the UN Convention on the Rights of Persons with Disabilities (CRPD) which inter alia imposes a legal obligation on States to protect this group in situations of risk, humanitarian emergencies

164 Zona Prava, «Зона права» запускает «горячую линию» для жертв домашнего насилия в условиях самоизоляции, 30 March 2020 - <http://zonaprava.com/events/zona-prava-zapuskayet-goryachuyu-liniyu-dlya-zhertv-domashnego-nasiliya-v-usloviyakh-samoizolyatsii/>; #TiНеОдна, Сеть взаимопомощи женщин ТыНеОдна создала чат-бота в Viber для пострадавших от домашнего насилия, 28 April 2020 - <https://tineodna.ru/news/new-viber-bot>

165 Nasiliyu Net, «Только если на скорой привезут»: в московских больницах аборт отнесли к несрочным операциям, 20 April 2020 <https://nasiliu.net/tolko-esli-na-skoraj-privezut-v-moskovskih-bolnitsah-aborty-otnesli-k-nesrochnym-operatsiyam/>; see also Human Rights Watch, Denying Women Abortion Access in Moscow - <https://www.hrw.org/news/2020/04/28/denying-women-abortion-access-moscow> 28 April 2020

166 Article 12, CEDAW and Guidance Note on CEDAW and COVID-19

167 Takie Dela, В Мосгорздраве отрицают запрет на прерывание беременности во время пандемии, 22 April 2020 - <https://takiedela.ru/news/2020/04/22/mosgorzdrav-aborty/>

168 Coda Story, Младенец по видеосвязи. Как во время пандемии рождают в России, 17 June 2020 <https://www.codastory.com/ru/disinfo/pregnancy-birth-pandemic/>; In general, Russian women are entitled to free childbirth services in public hospitals but “commercial” services based on a contract with a particular hospital are available (with more comfort and, arguably, better medical services)

169 “People with disabilities” is deemed to include people with long term physical, mental, intellectual or sensory impairments as per Article 1 of the Convention on the Rights of Persons with Disabilities

170 <https://www.worldbank.org/en/topic/disability>

and natural disasters.¹⁷¹ States are also obliged to convey information, including healthcare and public health information, to people living with disabilities in an accessible way.¹⁷² Healthcare should be provided on an equivalent basis as the wider community.¹⁷³

The UN Special Rapporteur on the rights of persons with disabilities has noted that, “Little has been done to provide people with disabilities with the guidance and support needed to protect them during the ongoing COVID-19 pandemic, even though many of them are part of the high-risk group.”¹⁷⁴

In a country with a large population of people living with disabilities (some 13 million), there is a clear imperative on the Government of Russia to do as much as it can to support this vulnerable group during the COVID-19 crisis. Yet, evidence from IPHR partners suggests that, in some areas, the Russian authorities have fallen short in meeting their human obligations with respect to this group.

Quarantine measures imposed by the Russian authorities have not been tailored to meet the special needs of people with disabilities. COVID-19 related public health information is not provided using sign language or subtitles on central TV channels or on the main COVID-19 official government website. The COVID-19 official websites of regional authorities do however provide options for the visually impaired. The World Health Organisation (WHO) has issued guidance on accessible public health messaging for people with disabilities.¹⁷⁵

Social services (social workers and volunteers) at the regional level and in big cities have been supporting the elderly and people with disabilities with their essential needs such as buying food and medicines. The COVID-19 headquarters in Moscow have deployed some 9,800 social workers and 1,200 volunteers to support these vulnerable communities as well as setting up a welfare hotline.¹⁷⁶ The federal government is providing financial benefits to volunteers who care for the elderly, orphaned children and people with disabilities.¹⁷⁷ However, people with disabilities themselves have not been provided with any special financial assistance during the health emergency.

Institutional settings:

The treatment of vulnerable individuals within “psychiatric and neurological institutions” (PNIs) has been a major cause for concern among human rights activists and charities, which have called these PNIs “a GULAG for older people and people with disabilities.”¹⁷⁸ There are currently 600 such state institutions

171 UN Convention on the Rights of Persons with Disabilities <https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#9>; Article 11 sets out a duty on states to take “all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters.”

172 Article 9, UN CRPD; accessible measures include sign language, captioning, text messages, easy-to-read and plain language and accessible digital technology.

173 CRPD, Article 25

174 ‘COVID-19: Who is protecting people with disabilities? – UN rights expert’, UN Office of the High Commissioner on Human Rights, 17 March 2020 <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25725&LangID=E>

175 WHO, Disability considerations during the Covid-19 outbreak, <https://www.who.int/publications/i/item/WHO-2019-nCoV-Disability-2020-1> March 2020

176 https://www.youtube.com/watch?v=AB_M7ysHxho&feature=youtu.be

177 At the time of writing, 4000 individuals are eligible for these monthly payments of 1 MSW (approx. EUR 143)

178 Meduza, «Система ПНИ — это современный ГУЛАГ для престарелых и инвалидов» Доклад Нюты Федермессер о ситуации в российских психоневрологических интернатах. Расшифровка, 26 June 2019 - <https://meduza.io/feature/2019/06/26/sistema-pni-eto-sovremennyy-gulag-dlya-prestarelyh-i-invalidov>

in Russia with more than 155,000 patients typically housing between 500-1000 people with a very wide range of mental health problems (from light to severe).

PNIs have been badly affected by COVID-19. By 23 May 2020, cases were confirmed in 79 institutions across 34 regions.¹⁷⁹ In April 2020, a major outbreak occurred at a PNI in St Petersburg with 400 infections and 20 deaths.¹⁸⁰ Further outbreaks have followed in institutions in Moscow, Saratov and Rostov. NGOs have been allowed to enter and provide support including offering temporary accommodation for residents.¹⁸¹ It has been difficult to secure regular statistics of the infection and death rates in PNIs as data is not easily available.

In terms of their legal status, PNIs are neither places of detention nor hospitals (although many of them have special “closed wards”). They are social institutions, but in reality their “patients” (officially referred to as “recipients of social services”) are completely isolated, fully dependent on the administration and subjected to strict regulation of their lives. They are, for all intents and purposes, deprived of their liberty under international human rights law. It is possible to remain in these institutions for an indefinite period and, as a consequence, the risk of deprivations (such as food, clothes, hygiene, medical services etc.) and human rights abuses are not an infrequent occurrence.¹⁸² There are moves afoot to introduce policy reform in this area.¹⁸³

The Government has taken some steps to manage the pandemic in these institutions and, on 6 April 2020, the Ministry of Labour and Social Protection (responsible for state residential institutions) issued COVID-19 guidance to staff working in PNIs. In addition, on 18 May 2020, the Russian authorities announced bonus payments for staff in PNIs with confirmed COVID-19 cases.¹⁸⁴

The potential risk of rights violations within the institutional settings remains high given the poor health of this vulnerable population. In light of this, the Government of Russia should ensure that any COVID-19 related protective measures do not result in inhuman or degrading treatment contrary to Article 3 of the ECHR and that such measures are lawful, proportionate and necessary.¹⁸⁵

179 Meduza, Вместе с коронавирусом приходит Следственный комитет, 23 May 2020 - <https://meduza.io/feature/2020/05/23/vmeste-s-koronavirusom-prihodit-sledstvennyy-komitet>

180 Novaya Gazeta, Гиблое место. Коронавирус пришел в психоневрологические интернаты, 20 May 2020 - <https://novyagazeta.ru/articles/2020/05/20/85446-gibloe-mesto>

181 Meduza, Из-за пандемии волонтеров не пускают в детские приюты, ПНИ и дома престарелых, 1 May 2020 - <https://meduza.io/feature/2020/05/01/iz-za-pandemii-volonterov-ne-puskayut-v-detskie-priuty-pni-i-doma-prestarelyh>

182 See the Recommendations of the Presidential Council for the development of Civil Society and Human Rights adopted on 25 July 2019, Соблюдение прав человека в стационарных социальных организациях психоневрологического профиля и создание альтернативных форм жизнеустройства граждан с психофизическими и ментальными нарушениями, available at: <http://president-sovet.ru/presscenter/news/read/5683/>

183 Meduza, В России наконец-то на уровне законов начали менять условия жизни в ПНИ. Объясняем по пунктам, в чем прорыв — и чего еще остро не хватает, 26 May 2020 - <https://meduza.io/feature/2020/05/26/v-rossii-nakonets-to-na-urovne-zakonov-nachali-menyat-usloviya-zhizni-v-pni-ob-yasnyаем-po-punktam-v-chem-proryv-i-chego-esche-ostro-ne-hvataet>

184 State Duma of the Federal Assembly of the Russian Federation, Выделено более 7,6 млрд рублей на доплаты сотрудникам соцучреждений, 18 May 2020 - <http://duma.gov.ru/news/48574/>

185 See: European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Statement of Principles relating to the treatment of persons deprived of liberty in the context of the coronavirus disease (COVID-19) pandemic CPT/Inf (2020)13, 20 March 2020 - <https://rm.coe.int/16809cfa4b>

Older People:

The elderly are at significant risk of contracting COVID-19 given the presence of pre-existing conditions. The UN Independent Expert on the enjoyment of all human rights by older persons has expressed concerns at State failure to adequately protect the rights of older people during the pandemic and has called for an international legal framework to protect their rights.¹⁸⁶

The authorities in Moscow and Moscow region took early steps to protect this vulnerable population by issuing a self-quarantine order on 26 March 2020 prior to the city- or region-wide lockdown. In addition, a number of “soft” measures were put in place to cocoon this population including relief payments (RUR 4000, EUR 50 per month in Moscow and RUR 3000 in Moscow region) as an incentive to remain at home as well as support from volunteers (by both private and government-sponsored initiatives). However, in a bid to discourage the over-65s from leaving home, the Mayor of Moscow and the Moscow region Governor suspended their right to free travel on public transportation – a measure that could be seen as discriminatory.¹⁸⁷

Civil society organisations, rather than the Government, have been actively helping the over-65s maintain social connections. For instance, the NGO Starost V Radost (“Old Age in Joy”) has been developing a “video volunteering” opportunity programme.¹⁸⁸

III MIGRANTS, ETHNIC MINORITY GROUPS AND XENOPHOBIA

According to the International Organisation for Migration, in 2019 there were some 272 million migrants in the world (approximately 3.5% of the global population).¹⁸⁹ The impact of the pandemic on migrants (including those who are “non-documented or irregular” migrants) and ethnic minority groups has been particularly acute during the reporting period. Many migrants live in precarious situations with little or no job security and work in the ‘grey economy.’ They may not have contact with the health authorities if non-documented and without access to adequate water, sanitation and hygiene (WASH) facilities given their unstable housing situations. Moreover, members of these communities may not be able to quarantine safely as per government guidance due to financial barriers or lack of suitable home/housing.

Migrants are protected under a variety of international human rights instruments including the ICCPR, ICESCR, the Convention on the Rights of the Child (CRC) and, in the case of migrant workers, the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW).¹⁹⁰ The rights of refugees and asylum seekers (who may cross international borders and

186 Virtual debate “Human Rights of older persons in the age of COVID-19 and beyond” with the High Commissioner for Human Rights and the new Independent Expert on the enjoyment of all human rights by older persons, 12 May 2020 - <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25879&LangID=E>

187 RBC, Собянин отменил бесплатный проезд в транспорте для людей старше 65 лет, 25 March 2020 - <https://www.rbc.ru/society/25/03/2020/5e7b43489a7947e1f5633847>

188 Starost V Radost, Видео волонтерство [no date] - <https://starikam.org/trips/>

189 UN Migration (International Organisation for Migration), World Migration Report 2020 - https://publications.iom.int/system/files/pdf/wmr_2020.pdf; the term ‘migrant’ is not defined under international law but the IOM definition states that it is a term “reflecting the common lay understanding of a person who moves away from his or her place or usual residence, whether within a country or across an international border temporarily or permanently, and for a variety of reasons.” This definition encompasses asylum seekers and refugees. See: <https://www.iom.int/who-is-a-migrant>

190 <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CMW.aspx>; Russia has not ratified the ICRMW

fall within the IOM definition of a migrant) are protected by the 1951 Convention relating to the Status of Refugees under international refugee law. In terms of Europe, non-nationals living in the jurisdiction of a state party are protected under both the ECHR and the European Social Charter (revised).¹⁹¹ The principle of equal treatment and non-discrimination applies equally to migrants and ethnic minority groups under international human rights law.¹⁹²

According to official data, there were approximately 4 million labour migrants in Russia (and 10 million foreign nationals in total) in mid-2019.¹⁹³ The majority of labour migrants are from Central Asia. They have faced serious privations and challenges during the pandemic. Most live in big cities and are employed, often informally, in the service sector as construction workers, taxi drivers, cleaners, deliverymen, waiters and sales clerks. Often, they leave families back home and live in rented apartments in groups. In late March 2020, many migrants were unable to leave the country due to border closures and were left in Russian cities without employment or funds to pay for rent. As many are employed informally, they have been unable to claim even small bonuses offered by the government with only minimal support in terms of a 3-month exemption for monthly “patent” payments.¹⁹⁴ The government did however extend their residence permits automatically.¹⁹⁵

There have been outbreaks of COVID-19 in migrant accommodation, including an illegal hostel near St. Petersburg housing some 500 migrants living in poor conditions and cramped rooms.¹⁹⁶ There is a higher incidence of COVID-19 in migrant neighbourhoods.¹⁹⁷ Migrants have been reported to be fearful of seeking medical help and assistance given their non-documented status.¹⁹⁸ On 30 April 2020, the Mayor of Moscow announced that migrants would not be denied medical assistance should they need it but reports suggest that they have been discriminated against in accessing diagnostic tests for COVID-19.¹⁹⁹

191 European Social Charter (Revised), 3 May 1996, ETS 163; the ESC provides a broad range of human rights including in relation to employment and working conditions. The Charter makes specific provision for the rights of migrants under Article 18 (1)– the right to engage in gainful occupation in the territory of other Parties and article 19 (1) – the right of migrant workers and their families to protection and assistance. Russia ratified the Charter on 16th October 2009 and has accepted 67 of its 98 paragraphs; it has not accepted either Article 18(1) or Article 19 (1) and other associated provisions.

192 ICCPR, Article 2(1), 26; ICESCR, Art 2(2); ICERD, Art 1(1); UDHR, Art 2(1)

193 Parlamentskaya Gazeta, В МВД раскрыли общее число мигрантов в России, 17 July 2019 - <https://www.pnp.ru/social/v-mvd-raskryli-obshhee-chislo-migrantov-v-rossii.html>

194 In order to be employed officially, migrants are required to pay a flat-rate “patent” fee (approx. 60 EUR in Moscow). President Putin’s decree of 18 April 2020 exempted migrants from these payments for the period 15 March – 15 June 2020. See: <https://www.rbc.ru/rbcfreenews/5e9af6339a794776b2aa6229>

195 REGNUM, Путин упростил правила пребывания иностранцев в России, 18 April 2020 - <https://regnum.ru/news/society/2920871.html>

196 Meduza, В нелегальном хостеле под Петербургом коронавирусом заразились больше 100 человек. Они занимались строительством для IKEA, 16 April 2020 - <https://meduza.io/feature/2020/04/16/v-nelegalnom-hostele-pod-peterburgom-koronavirusom-zarazilis-bolshe-100-chelovek-oni-zanimalis-stroitelstvom-dlya-ikea>

197 Знак, «Будет подключаться прокуратура». В Железнодорожном районе Екатеринбурга — вспышка коронавируса. Болеют семьи мигрантов, 22 May 2020 - https://www.znak.com/2020-05-22/v_zheleznodorozhnom_rayone_ekaterinburga_vspyshka_koronavirusa_boleyut_semi_migrantov

198 Kommersant, Преступность не вышла из самоизоляции, 14 May 2020 - <https://www.kommersant.ru/doc/4343694>

199 Open Democracy, ‘Russia’s labour migrants are caught between poverty and a pandemic’ 7 May 2020 - <https://www.opendemocracy.net/en/odr/russia-labour-migrants-covid19/>; see also <https://www.interfax.ru/moscow/706926>

The reporting period documented four cases of hate speech and xenophobic/racist violence in March (in Moscow and St Petersburg) but no incidents in either April or May.²⁰⁰

In terms of ethnic minority groups, there remain concerns for “small indigenous people” in the North and East of Russia; many in these communities live in remote locations, with little access to communications, transport, or healthcare. In some regions, the authorities are taking measures to protect these remote communities: in the Khanty-Mansi Autonomous Okrug, helicopters are on standby 24 hours a day should medical evacuation be necessary; mobile medical teams are in position to travel to remote locations to examine residents and a “floating clinic” boats travel along local rivers to provide medical support.²⁰¹

At the time of writing, no COVID-19 cases have been identified among indigenous communities. However, there are some 50 cases in one of the districts of Altai with a high proportion of indigenous people and in the remote district of Khabarovsk Kray, home to the Ulch people where the community was quarantined for a month.²⁰²

Civil society organisations have expressed concern about the lack of tailored measures to support indigenous communities in remote settlements. In particular, concerns have been raised about the limited access to information provided to them during the reporting period.²⁰³

These vulnerable communities have, to some degree, fallen between the cracks in terms of protection and the government of Russia should urgently revisit the help and support offered to them during the health emergency.

200 SOVA Center, Русский национализм и ксенофобия. Итоги марта 2020 года, 1 April 2020 - <https://www.sova-center.ru/racism-xenophobia/publications/2020/04/d42254/>

201 Korennye Malochislennye Narody Severa, website of the Government of the Khanty-Mansi Autonomous Okrug, Коренные народы в Югре защищены от коронавируса, 15 June 2020 - <https://kmns.admhmao.ru/vse-novosti/4356335/>

202 Natsionalny Aktsent, В Республике Алтай объяснили вспышку коронавируса проведением праздников в селах, 17 June 2020 - <https://nazaccent.ru/content/33405-v-respublike-altaj-obyasnili-vspyshku-koronavirusa.html>

203 Uralinformbureau, Когда COVID-19 придет в тундру, 7 April 2020 - <https://www.uralinform.ru/interviews/society/325656-kogda-covid-19-pridet-v-tundru/>

VI. Summary of Key Findings

I. LEGALITY OF RESTRICTIVE MEASURES:

The restrictive measures imposed by the Government of Russia were introduced in compliance with existing constitutional and legal frameworks. However, there are serious concerns about the abject failure of the Russian authorities to declare a state of emergency at the federal level, which would have permitted restrictions of human rights and freedoms under the Constitution. Moreover, various restrictive measures imposed are of an indefinite nature with no sunset clause or end date. Any restriction imposed on public health grounds should be subject to ongoing review, oversight and scrutiny. Emergency legislation should not be used as an excuse to circumvent 'normal' legislation. Human rights groups have noted inconsistencies and irregularities in the way in which penalties have been applied for breaching lockdown measures.

II. FREEDOM OF MOVEMENT

The public health imperative to restrict freedom of movement and, in some instances, to deprive people of their liberty, is in line with international human rights law. However, there are important questions around the treatment of people who are detained on public health grounds in "observatories." Any allegations of ill treatment by the police and/or security staff, and poor 'prison-like' conditions should be investigated immediately by the Government. Quarantine measures should remain under regular review and oversight.

III. RIGHT TO LIFE/PROHIBITION OF INHUMAN TREATMENT

The right to health includes the right to a safe and hygienic work environment.²⁰⁴ The Government of Russia has failed to provide medical professionals with adequate PPE to enable them to carry out their work safely. The UN Committee on Economic, Social and Cultural Rights has re-affirmed that "All health-care providers must be provided with proper protective clothing and equipment against contagion."²⁰⁵

The treatment of people in prison, and in particular those in immigration detention centres, raises grave human rights concerns. It is critical that this vulnerable community are not 'left behind' and are treated in line with international human rights standards. In particular, the Government of Russia should take more concerted efforts to decongest prisons at greater speed and ensure people in prison have regular access to family and, legal counsel on a confidential basis.

It is vitally important that the Russian authorities are transparent, accountable for their actions and subject to external scrutiny. In particular, the authorities should provide regular and open source data relating to the number of people in prison and robust and accurate medical data.

204 Article 12 (2), ICESCR

205 Committee on Economic, Social and Cultural Rights, Statement on the coronavirus disease pandemic and economic, social and cultural rights, Doc E/C.12/2020/1, 17 April 2020 - <https://undocs.org/E/C.12/2020/1>

IV. RIGHT TO PRIVACY

The collection of personal data through the mobile app “Social Distancing” has been deeply controversial and potentially violates users’ privacy rights. In particular, there are questions as to whether individuals gave fully informed consent to share their data. Indeed, evidence suggests that consent clauses were confusing, lengthy and in complex language. In such cases, this would vitiate any consent validly given. Data protection principles require that any request for consent needs to be ‘prominent, concise, separate from other terms and conditions, and in plain language.’²⁰⁶ There remain ongoing concerns about the use and retention of data at the end of the self-isolation period.

V. RIGHT TO PEACEFUL ASSEMBLY

The restrictive measures imposed by the authorities have severely impinged upon the right to peaceful assembly and in several cities and regions (Moscow, St Petersburg, Perm, Moscow region). Public rallies were prohibited from the end of March 2020 until mid-June 2020. There are ongoing concerns that the measures have been applied in an arbitrary way and, on occasion, without lawful basis such as in the case of “single person” pickets. There are also issues around the arbitrary detention of peaceful protestors.

VI. FREEDOM OF EXPRESSION/ACCESS TO INFORMATION

The Government has been widely criticised for imposing “fake news” legislation as a way of silencing critical voices during the emergency health crisis. In particular, the the new legislation is drafted in vague and overly broad terms. Such measures have been used to target activists, journalists, bloggers and politicians and threatens freedom of expression. Criminal proceedings under this legislation should not be used as a tool to silence critical voices.

The Government has taken measures to disseminate public health information through different media channels in Russian. This has not proved problematic as the majority of the population speaks Russian but there are some challenges concerning the dissemination of public health information to remote communities.

VII. RIGHT TO EQUALITY AND THE PROHIBITION AGAINST DISCRIMINATION

The Government of Russia has made some efforts to support vulnerable communities during the pandemic through financial support and other measures. However, some communities have fallen through the cracks in terms of rights protection.

Research shows that migrant communities are very vulnerable, particularly those in detention. The Government of Russia should ensure that they can access healthcare and welfare support as required, regardless of their immigration or citizenship status.

The Government of Russia has taken a number of measures to protect the rights of women and girls at risk during the pandemic but there is more to be done. In particular, the authorities should ensure that

206 UK Information Commissioner’s Office, Guide to the General Data Protection Regulation, What is valid consent? <https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/consent/what-is-valid-consent/>

survivors of domestic abuse are provided with full information about support services available and that sexual and reproductive healthcare is provided on an ongoing basis during the pandemic including safe abortion and post-abortion services.

People with disabilities should also be provided public health information in an accessible format.

VIII. FAIR TRIAL

The Government of Russia has made commendable efforts to ensure that the wheels of justice continue to turn during the pandemic. The use of 'remote justice' tools and online technology such as WhatsApp, Skype, Zoom or videoconferencing is certainly helpful but robust safeguards should be in place to ensure equality of arms between the parties. 'Remote justice' will not comply with international human rights standards if there is no "effective participation" by the parties. Looking forward, key criminal justice stakeholders should, within COVID-19 safety guidelines, consider re-introducing in-person hearings to ensure compliance with fair trial standards and principles.

Remote justice tools should be used as an exception rather than the rule and only when they are deemed to be technically sound, secure and tested on a regular basis.

To date, there are no national guidelines and eligibility criteria in place for remote hearings and it is left to the discretion of the individual court. The judiciary and courts service should draft national guidelines at the earliest opportunity to ensure consistency across the board.

VII. Recommendations

TO THE GOVERNMENT OF RUSSIA:

- Provide medical professionals with sufficient PPE to enable them to carry out their work safely and in conditions, which respect their dignity and right to life.
- The Government of Russia should increase the use of non-custodial measures where possible to decongest the prison population.
- Legal counsel should be offered private and confidential meeting space at pre-trial detention facilities and recording facilities should be disabled during meetings.
- Provide ongoing and meaningful support for survivors of domestic abuse.
- The Government of Russia should fully investigate any allegations of ill-treatment by the police and/or security staff in “observatories” and any other places where individuals are deprived of their liberty.
- Review the use of immigration detention and ensure that detainees are treated in line with international human rights standards.
- Ensure that the right to health is extended to people in prison in line with international human rights standards. Persons deprived of liberty should have access to the same standard of healthcare as is available in the community.
- Ensure robust and regular external monitoring of the penitentiary system in line with principles of transparency and accountability.
- The Government of Russia should revisit the privacy issues around the use of monitoring tools including the “Social Monitoring” app most notably with reference to the consent clauses and the use and retention of data.
- Ensure that COVID-19 public health information is disseminated to ‘hard to reach’ communities across the country.
- Ensure that the “fake news” legislation is not used in an arbitrary way that has a chilling effect on public debate.
- Ensure that vulnerable communities (including women and girls, migrants, people with disabilities, older people) are not discriminated against in terms of healthcare provision, welfare support and access to public health information.
- Ensure that robust safeguards are in place for the use of remote technology and virtual hearings with regular review and monitoring.
- Draft national guidelines and eligibility criteria for remote justice hearings, in line with international human rights standards and in conjunction with human rights institutions and external experts.