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30 March 2020

Dear Director of the Federal Penitentiary Service, Dear Prosecutor General, Dear Minister of Justice,

URGENT MEASURES TO PROTECT PRISONERS AND STAFF FROM COVID-19

I am writing to you on behalf of international non-governmental human rights organization Amnesty International to express our deep concern regarding the potentially drastic consequences of the spread of COVID-19 among the prison population in Russia and people working there.

Amnesty International has noted that the Federal Penitentiary Service (FSIN) has taken certain measures aimed at preventing the spread of the COVID-19 pandemic among the Russian prison population and staff, including the decision to establish an Operational Task Force of the FSIN to coordinate the activities of all penitentiary institutions as to prophylaxis and timely detection of infections, introduction of a ban on all social visits to places of detention, measures to prevent prison staff and other visitors who might have COVID-19 from entering the institutions and an order to hospitalize detainees with COVID-19 symptoms in civil hospitals.

However, considering the speed with which the novel coronavirus spreads and the danger it poses especially for older people and those with underlying health conditions, and in view of the dense co-habitation of inmates and overcrowding of many places of detention; the remoteness of the majority of the penal colonies, in particular from civil hospitals, and other difficulties of access to them; FSIN medical facilities not being suited for dealing with a pandemic such as posed by COVID-19; and the limitations of hygiene and sanitation conditions in penitentiary

institutions, more urgent measures are needed to adequately address the challenge. Any new measures and those that are already in place need to be brought in line with international human rights law and standards.

PROMPT ACCESS TO MEDICAL ATTENTION AND HEALTHCARE

According to international legal standards on conditions of detention, the Russian authorities must ensure that all prisoners have prompt access to medical attention and health care.¹ The provision of health care for prisoners is a state responsibility. Prisoners should enjoy the same standards of health care that are available in the community, including when it comes to testing, prevention and treatment of COVID-19. Where a prison service has its own hospital facilities, they must be adequately staffed and equipped to provide prisoners referred to them with appropriate treatment and care; prisoners who require specialized treatment or surgery should be transferred to specialized institutions or to civil hospitals.²

Amnesty International welcomes the instruction to hospitalize detainees with COVID-19 symptoms in civil hospitals and is calling on the Russian penitentiary authorities to ensure that decisions to hospitalize are taken promptly and the prisoners are transported to civil hospitals in a prompt and humane manner. Given that the spread of transmissible diseases is a public health concern, especially in the prison environment, it is desirable that, with their consent, detainees can have access, within a reasonable time after their admission to prison, to free screening tests. Not providing appropriate medical treatment that could reasonably be expected of the state, including to hold prisoners who suffer from serious and highly infectious diseases in close confinement with many other prisoners, may amount to ill-treatment.

The Russian authorities must also ensure that prison staff and health care workers have access to adequate information, equipment, training and support to protect themselves.

PROVISION OF HYGIENE AND SANITARY PRODUCTS

One of the advices the World Health Organization (WHO) has given to the public to protect against the spread of the novel coronavirus is to “[r]egularly and thoroughly clean hands with an alcohol-based hand rub or wash them with soap and water”.³ Amnesty International is concerned that the reported very basic hygienic facilities and inadequate sanitation in places of detention will exacerbate an already precarious situation and poses a high risk of severe illness or even loss of life. In this respect, we are urging you to ensure that all detention facilities are equipped with sufficient and functioning sanitizing equipment and/or other facilities that detainees and staff can use and that all detainees are provided with adequate quantity of soap and sanitizing gel or wipes and that they have constant access to clean running water. Ensuring adequate access to water and sanitation is crucial to effectively preventing exposure to COVID-19.

CONSIDER RELEASE OF PRISONERS TO MITIGATE THE RISK OF INFECTION AND PROTECT VULNERABLE GROUPS

Another basic protective measure recommended by the WHO is to maintain physical (“social”) distancing from others. Such advice is hardly possible to follow in prisons, especially in the shared confined space of cells, sometime particularly overcrowded, and dormitories of the Russian detention facilities and prison colonies. In its *Global Prison*

¹ See, United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), UN Doc. A/RES/70/175, undocs.org/A/RES/70/175

² See, United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), UN Doc. A/RES/70/175, rule 27(1), undocs.org/A/RES/70/175

³ See at: www.who.int/emergencies/diseases/novel-coronavirus-2019/advice-for-public

Trends Report 2019, international NGO Penal Reform International specifically pointed out that the transmission of diseases is rife in overcrowded facilities, thus, putting lives of both prisoners and staff at risk. ⁴

In most situations of detention people do not have any choice but to live or work in close proximity with others, often without access to adequate preventive measures. This means that groups of people, who according to the World Health Organization are more vulnerable to COVID-19, including older people and those with pre-existing medical conditions such as asthma, diabetes, heart disease or a weakened immune system, are especially likely to become severely ill or even die as a result of COVID-19. Urgent steps need to be taken to prevent unnecessary loss of life.

Under the states' duty to review the need for continued custodial detention states should consider if the present situation qualifies certain groups of prisoners for parole or early/conditional release or other alternative non-custodial measures. Full account must be taken of individual circumstances and the risks posed to groups of prisoners at particular risk. Efforts should be made to release older detainees, for example because they no longer pose a threat to public safety and they have already served a significant portion of their prison sentence. Not providing or carrying out a process in which prisoners can apply for early/conditional release due to medical circumstances may amount to a violation of the right of an effective remedy. The rapidly evolving situation of the COVID-19 pandemic should be cause for a serious, comprehensive and speedy review which groups of prisoners could be subject to forms of release, given the particular public health concern in custodial environments.

Several countries, including as diverse as USA, Pakistan and Iran, have already taken steps to release prisoners. Others, including Germany and the UK, are considering such measures. Most recently, the UN High Commissioner for Human Rights has called on the governments to “work quickly to reduce the number of people in detention”.⁵ Russia must follow this call and consider adopting relevant measures too.

We are further urging the Russian authorities to review the practice of using administrative detention and to immediately consider for release those who are currently in administrative detention, in particular those held for non-violent offences.

Moreover, we are calling on you to immediately and unconditionally release all persons deprived of their freedom solely for peaceful enjoyment of their rights to freedom of expression, association, peaceful assembly, belief or equality and non-discrimination (prisoners of conscience), as they should not have been imprisoned in the first place.

RELEASE DETAINEES HELD IN PRE-TRIAL DETENTION

According to the latest available data, almost 97,000 detainees (or 18,6% of Russia's prison population)⁶ are held in pre-trial detention. Under international human rights law, pre-trial detention must be an exceptional measure used only as a last resort when there is substantial risk of flight, harm to others or interference with the evidence or investigation that cannot be allayed by other means. The burden of proof that the pre-trial detention is necessary and proportionate rests on the state. The presumption of release pending trial is based on the presumption of innocence, which is enshrined in international law and in the Russian Constitution. In its Ruling issued in 2013, the Russian Supreme Court once again confirmed the importance of these principles and outlined how the pre-trial detention must be used.⁷

Amnesty International is urging the relevant Russian authorities to stringently adhere to the principle of the use of pre-trial detention as an exceptional measure of last resort and ensure the release of anyone in whose case this principle does not apply. As you will be well aware, it is a widely-shared concern that pre-trial detention has been

⁴ See at: <https://www.penalreform.org/resource/global-prison-trends-2019/>

⁵ See at: news.un.org/en/story/2020/03/1060252?utm_source=UN+News+-+Newsletter&utm_campaign=d4f47525e3-EMAIL_CAMPAIGN_2020_03_25_07_40&utm_medium=email&utm_term=0_fdbf1af606-d4f47525e3-107116441

⁶ See at: www.prisonstudies.org/country/russian-federation

⁷ See at: www.rg.ru/2013/12/27/praktika-dok.html

widely used in Russia indiscriminately and as such, is not an exceptional measure of last resort. At this time more than ever before, we are urging the relevant Russian authorities to ensure that alternative, non-custodial measures are used in all cases, both ongoing and new, where pre-trial detention is not necessitated by the genuinely exceptional circumstances of the case. In addition, the risks posed by the COVID-19 pandemic to people in any custodial setting should be a strong factor weighing towards release, compounding the presumption of release already in place in any event.

MIGRATION RELATED DETENTION AND COVID-19

Similarly to the above, migrants and asylum-seekers must benefit from a legal presumption of liberty. Any deprivation of their liberty must be clearly prescribed by law, strictly justified, non-arbitrary and as minimally restrictive as possible. Detention solely for immigration purposes is only allowed in the most exceptional of circumstances: to prevent an objective risk of absconding; to verify identity; and to ensure compliance with a deportation order. During a global public health crisis such as COVID-19, the necessity and proportionality assessment for any of the three allowable exceptions must be even more stringent. As a result, detention solely for migration-related reasons should generally not be considered justifiable. When immigration detainees' right to health cannot be upheld or when deportations cannot be carried out swiftly, detainees should be released, and state authorities must act to ensure people's access – free from discrimination – to essential services, care and safety, including adequate accommodation and healthcare.

ENSURE LIMITATION OF CONTACT WITH THE OUTSIDE WORLD IS NECESSARY AND PROPORTIONATE

The rights of detainees to communicate with the outside world and to receive visits are fundamental safeguards against human rights violations, including torture or other ill-treatment and enforced disappearance. They affect the ability of the accused to prepare their defence and are required to protect the right to private and family life and the right to health.⁸ Contact with the outside world is essential to the mental wellbeing of people in detention and can reduce levels of violence. Prisoners' rights as to the contact with the outside world are enshrined, *inter alia* in the UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules).⁹ While restrictions on social visits can be legitimate to prevent spread of COVID-19, they also should be necessary in the case and proportionate, including by being time limited and non-discriminatory and decision-making policy should be comprehensive and transparent. Contact visits must be replaced by increased means and opportunities of contacting the outside world, for example, by phone, emails or video calls.¹⁰

In the context of the Russian penitentiary system, with its already limited number of visits and social calls allowed for convicted prisoners, and with additional limitations imposed for visiting pre-conviction detainees, blanket bans on social visits without ensuring alternative means of communication could have detrimental effect on prisoners' and detainees' mental health and well-being, family ties and increases the risk of further human rights violations, including torture and other ill-treatment.

Amnesty International is particularly concerned with the recurring reports about lawyers being denied visits to their clients in pre-trial detention facilities in the context of the current ban on visits with COVID-19 given as a reason. Restriction or prevention of legal visits directly impacts detainees' right to a fair trial. To ensure that this right is not violated, penal authorities must introduce a sufficient and effective measures allowing for the lawyers' unimpeded access to their clients, while still guarding against the spread of COVID-19 in the penal institutions.

In view of the urgency of the situation we would appreciate your immediate consideration of the measures suggested above.

⁸ See, Amnesty International, *Fair Trial Manual* (Index: POL 30/002/2014) www.amnesty.org/en/documents/pol30/002/2014/en/

⁹ See, especially Rule 58, undocs.org/A/RES/70/175

¹⁰ On this, see, for example PRI Briefing Note *Coronavirus: Healthcare and human rights of people in prison*, 16 March 2020, www.penalreform.org/resource/coronavirus-healthcare-and-human-rights-of-people-in/

Yours sincerely,

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