

**Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the independence of judges and lawyers; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment**

REFERENCE:  
AL RUS 20/2018

15 August 2018

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the independence of judges and lawyers; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 34/18, 34/5, 35/11 and 34/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning Ms. Irina Biryukova and Mr. Evgeny Makarov.

Ms. Biryukova is a lawyer with Public Verdict Foundation, an organisation which raises awareness about alleged human rights violations carried out by law enforcement officials. The organization provides legal assistance to those who have been subjected to violations by law enforcement and that works to monitor the human rights situations of inmates in prisons and detention centres.

Mr. Makarov is a client of Ms. Biryukova and a detainee in Yaroslavl's prison colony N1.

According to the information received:

In 2017, Mr. Makarov told Ms. Biryukova that he had been beaten by prison guards. The ensuing investigation by Russian authorities concluded that proportionate force had been used against Mr. Makarov.

On 20 July 2018, the newspaper Novaya Gazeta published a video, reportedly filmed by a prison guard in 2017, allegedly showing Mr. Makarov being tortured by up to 17 prison guards. The 10-minute clip shows prison guards punching Mr. Makarov, who is immobilised on the table for the most part, and beating him with batons.

The footage generated widespread attention and the Federal Investigative Committee subsequently launched an investigation under Article 286, "exceeding official power with the use of violence", of the Criminal Code of the Russian

Federation. Pending the outcome of the investigation, 17 prison guards were dismissed. By 23 July, six of those dismissed had been arrested.

Ms. Biryukova began receiving threats, including death threats, via social media shortly after the publication of the video. She sent letters to the Federal Bar Association and the head of the Federal Investigative Committee informing them of the threats and requesting State protection for her and her family. On 22 July, Ms. Biryukova was told by a source close to the administration of Yaroslavl's prison that her physical safety was in danger.

Ms. Biryukova did not hear back following her request for State protection, and she has since fled the Russian Federation for her own safety. She has since requested protection for Mr. Makarov, as he fears for his life. He has requested protection from the Ombudsman of the Yaroslavl region.

It is understood that Mr. Makarov has been held in solitary confinement since around the time of the video's publication online.

We express serious concern at the safety of Ms. Biryukova and the threats against her as well as at the safety and security of Mr. Makarov while in prison. We express concern that the threats against their physical integrity and security are directly connected to the dissemination of the video showing use of force amounting to torture by prison guards against Mr. Makarov.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above and are referred to in the **Annex on Reference to international human rights law** attached to this letter.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or any comment(s) you may have on the above-mentioned allegations.
2. Please provide information about whether any investigation has been initiated into the threats against Ms. Biryukova. If no such investigation has been initiated, please explain why.
3. Kindly indicate what measures will be taken to assess the need to provide State protection to Ms. Biryukova and her family in the event that they return to the Russian Federation.

4. Please explain the reasons for the solitary confinement of Mr. Makarov, and how it is compatible with international human rights norms and standards.
5. Please provide detailed information about the measures taken by Your Excellency's Government to effectively protect, in law, procedures and practice, individuals from ill-treatment and torture while in prison.
6. Please indicate what measures have been taken to ensure that human rights defenders in the Russian Federation are able to carry out their peaceful and legitimate work in a safe and enabling environment without fear of threats or acts of intimidation and harassment of any kind.

We would appreciate receiving a response within 60 days. Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Please accept, Excellency, the assurances of our highest consideration.

David Kaye  
Special Rapporteur on the promotion and protection of the right to freedom of opinion  
and expression

Michel Forst  
Special Rapporteur on the situation of human rights defenders

Diego García-Sayán  
Special Rapporteur on the independence of judges and lawyers

Nils Melzer  
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or  
punishment

## **Annex**

### **Reference to international human rights law**

In connection with above alleged facts and concerns, we would like to draw your attention to articles 7 of the International Covenant on Civil and Political Rights, ratified by the Russian Federation on 3 March 1987, which provides that “[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” The absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment is also codified in articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which the Russian Federation ratified on 3 March 1987.

We would also like to refer to articles 9 and 19 of the International Covenant on Civil and Political Rights (ICCPR), which provide that everyone has the right to liberty and security of person and the right to freedom of expression, including to impart information through any media of their choice.

We wish to bring the attention of your Excellency’s Government to principle 7 of the Basic Principles for the Treatment of Prisoners, adopted by General Assembly resolution 45/111 of 14 December 1990, which state that efforts addressed to the abolition of solitary confinement as a punishment, or to the restriction of its use, should be undertaken and encouraged.

Moreover, we would like to refer to the report by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (A/66/268), in which it is stated that the use of prolonged solitary confinement in itself runs afoul of the absolute prohibition of torture and other ill-treatment. Moreover, due to the prisoner’s lack of communication, and the lack of witnesses, solitary confinement enhances the risk of other acts of torture or ill-treatment.

We would further like to refer your Excellency’s Government to principle 16 of the Basic Principles on the Role of Lawyers, which calls on Governments to ensure, inter alia, that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference.

We would also like to draw the attention of your Excellency’s Government to Principle 15 of the UN Basic Principles on the Use of Force and Firearms by Law Officials, and to Rule 82 of the UN Standard Minimum Rules for the Treatment of Prisoners (as amended on Nov. 5, 2015 by the General Assembly and readopted as the “Mandela Rules”), which states that prison staff shall not, in their relations with the prisoners, use force except when strictly necessary for the maintenance of security and order within the institution, or when personal safety is threatened.

We welcome the opening of an investigation into the allegations of violence against Mr. Makarov. In this context, we would like to draw the attention of your Excellency’s Government to article 12 of the Convention Against Torture and other cruel, inhuman and degrading treatment or punishment (CAT), which requires the competent

authorities to undertake a prompt and impartial investigation wherever there are reasonable grounds to believe that torture has been committed, and article 7 of the CAT, which requires State parties to prosecute suspected perpetrators of torture. We therefore urge your Excellency's government to conduct the investigation in an impartial and independence manner and in accordance with the guidelines laid out in the Istanbul Protocol (Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment)<sup>1</sup>.

We would further like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2, which state that everyone has the right, individually and in association with others to promote and to strive for the protection and realization of human rights and that the State has a prime responsibility and duty to protect, promote and implement all human rights. We would also like to draw attention to articles 6, 9 (2), and 12 (2), which state that everyone has the right, individually and in association with others to freely publish, impart or disseminate to others information and knowledge on all human rights, that everyone whose rights are allegedly violated has the right to complain to and to have that complaint promptly reviewed in a public hearing before an independent, impartial and competent authority established by law and to obtain redress, including any compensation, where there has been a violation of that person's rights, and that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, against violence, threats, or retaliation as a consequence of his or her legitimate exercise of the right referred to in the present Declaration

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<sup>1</sup> see <http://www.ohchr.org/Documents/Publications/training8Rev1en.pdf>.