

**Mandates of the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and the Special Rapporteur on the rights of indigenous peoples**

REFERENCE:  
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25 November 2019

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and Special Rapporteur on the rights of indigenous peoples, pursuant to Human Rights Council resolutions 34/5, 34/18 and 42/20.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the ban from entry into Russia issued against human rights defender Mr. Johannes Rohr, which appears to be linked to his work in defence of human rights and his engagement with the UN in the field of human rights.

Mr. **Johannes Rohr** is a German national, the Senior Advisor on Russia at the **International Work Group for Indigenous Affairs** (IWGIA), and a project coordinator and board member at the **Institute for Ecology and Action Anthropology** (INFOE). Mr. Rohr has worked on the promotion and protection of the rights of indigenous peoples in Russia since 1994. He has cooperated with the United Nations human rights mechanisms since 1997, including by submitting reports to the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Racial Discrimination, and contributing to Russia's Universal Periodic Review. He has also attended several sessions of the UN Forum on Business and Human Rights.

According to the information received:

In early November 2018, Mr. Rohr received a 12-month multiple-entry humanitarian visa for Russia. Shortly after, he entered the country to attend two human rights seminars.

In late November 2018, Mr. Rohr attended the 7th UN Forum on Business and Human Rights held in Geneva. During the panel entitled "Trends and challenges in promoting business respect for human rights in Eastern Europe" he made remarks on the situation of indigenous peoples in northern Russia, highlighting the lack of free, prior and informed consent, the difficulties faced by civil society actors in monitoring resource extraction in inaccessible regions, the militarization of indigenous territories, and the lack of effective remedies. Mr. Rohr's statement was disputed by delegates of the Permanent Mission of the Russian Federation to the UN Office in Geneva and of the Global Compact local network speaking at

the Forum, who argued that Russian companies represented good practices in relation to compliance with human rights.

On 19 December 2018, Mr. Rohr flew to Moscow and was reportedly denied entry to Russia at Domodedovo airport, despite having a valid humanitarian visa. He was issued a document by the Federal Security Service (FSB) informing him of a ban from the country until 23 January 2069, which would be his 100th birthday. The document referred to article 27 of Federal Law 114 (1996) on the Procedure for Exit from and Entry, but provided no reason for the denial of entry. Mr. Rohr was forced to stay the night in a detention room at Domodedovo airport, together with approximately 10 people awaiting deportation. He was forced to sleep on the floor. During that time, his unlocked mobile phone was temporarily taken from him. On the next day, he was sent back to Berlin.

In January 2019, Mr. Rohr submitted an inquiry to the FSB requesting information on the reasons for his deportation. He also filed a judicial complaint regarding the denial of entry.

During the first hearing held at the Moscow City Court on 20 March 2019, the judge accepted the FSB argument that the reasons for the entry ban were a State secret but suspended the hearing given that the FSB did not provide the necessary documentation.

During the second hearing held on 20 June 2019, Mr. Rohr's lawyers were reportedly denied access to the evidence and the FSB did not provide an explanation for the length of the visa ban. Mr. Rohr's appeal was rejected.

In July 2019, Mr. Rohr received a written decision of the Moscow City Court to dismiss his claim to challenge the FSB decision. The decision reportedly did not provide an analysis of the circumstances of the case, but again referred to Article 27, para 1, item 1 of the Federal Law 114, which stipulates that entry can be denied in case of a threat to national security.

On 27 July 2019, Mr. Rohr's lawyer submitted an appeal to the Supreme Court. On 10 October 2019, he received a written notice informing him that the first appeal hearing would be held on 25 October 2019. He requested the hearing to be rescheduled due to the late notice but the request was rejected. During the session held on 25 October, the Supreme Court rejected the appeal and thus Mr. Rohr has now exhausted all domestic remedies.

While we do not wish to prejudge the accuracy of these allegations, we express our concern at the ban from entry into Russia issued against human rights defender Mr. Johannes Rohr, which appears to be linked to his work in defense of human rights.

We raise specific concern that the alleged human rights violations against Mr. Rohr may represent acts of intimidation and reprisals following his engagement with

the United Nations in the field of human rights, in particular in connection to his public remarks delivered during the 7<sup>th</sup> edition of the UN Forum on Business and Human Rights. Further concern is expressed regarding the lack of an explanation of the decision to ban him from entering the country until 2069, and the chilling effect that this decision may have on those working on the promotion and protection of the rights of indigenous peoples in Russia.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

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 on the legal procedure and grounds invoked for banning Mr. Rohr from entry into Russia, and how these are compatible with the obligations of the Russian Federation under international human rights law.
3. Please provide information on the measures in place to ensure that human rights defenders and civil society actors are able to cooperate with United Nations, its representatives and mechanisms in the field of human rights, including by disseminating information on all human rights and fundamental freedoms, without fear of intimidation or reprisal of any sort.
4. Please provide information as to what steps have been taken to ensure that human rights defenders in Russia, including those working on the rights of indigenous peoples, are able to carry out their peaceful and legitimate work in a safe and enabling environment, free from any physical, judicial or other harassment.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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.

In light of the allegations of possible acts of reprisal against Mr. Rohr for cooperation with the United Nations on human rights, we reserve the right to share this

communication – and any response received from Your Excellency’s Government - with other UN bodies or representatives addressing intimidation and reprisal for cooperation with the UN in the field of human rights, in particular the senior United Nations official designated by the Secretary General to lead the efforts within the United Nations system to address this issue.

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

Michel Forst

Special Rapporteur on the situation of human rights defenders

David Kaye

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

Victoria Lucia Tauli-Corpuz

Special Rapporteur on the rights of indigenous peoples

**Annex**  
**Reference to international human rights law**

In connection with above alleged facts and concerns, we would like to draw your attention to the following human rights standards:

We remind your Excellency's Government of article 19 of the International Covenant on Civil and Political Rights (ICCPR), ratified by the Russian Federation on 16 October 1973, which guarantees the right to freedom of opinion and expression. Any restriction to freedom of expression in Article 19 (2) must meet the threshold established under article 19(3) of the ICCPR, that is, be provided by law and be necessary and proportionate for the protection of the rights or reputation of others, for national security of public order (*ordre public*) or for the protection of public health or morals. The State is under a duty to demonstrate that any restrictions of the rights in Article 19 (2) are compatible with the requirements under Article 19 (3). The provision must be "interpreted strictly and in favor of the rights at issue", see Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights Annex, UN Doc E/CN.4/1984/4 (1984), IA3.

The invocation of national security considerations, although constituting a legitimate aim under Article 19(3), does not provide a blanket competence to restrict rights. First, the application of national security considerations cannot No limitation referred to in the Covenant shall be applied for any purpose other than that for which it has been prescribed, *id*, I A 6. Consequently, the application of restrictive measures for the purpose of silencing dissent or human rights advocacy or work would be incompatible with the Covenant. Furthermore, even if applied for a legitimate purpose, the requirement of necessity entails a duty to demonstrate, in fact, the needs for the limitation. The requirement of proportionality entails that the restriction "must be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve their protective function; they must be proportionate to the interest to be protected...The principle of proportionality has to be respected not only in the law that frames the restrictions but also by the administrative and judicial authorities in applying the law", see CCPR/C/GC/34 para. 34.

Article 2 (3) of the Covenant provides a duty on the part of the State to provide effective remedies against abuse. This entails the possibility of judicial or other review of the compatibility of the measure with the requirements under the Covenant, see Article 2 (3) (b).

We wish to reiterate the principle enunciated in Human Rights Council Resolution 12/16, which calls on States to refrain from imposing restrictions which are not consistent with article 19(3), including on discussion of government policies and political debate; reporting on human rights, engaging in peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups.

We would also 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 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the UN Declaration on Human Rights Defenders:

- Article 5 (c), which provides for the right to communicate with non-governmental or intergovernmental organizations;
- Article 6 (b) and c) which provide that everyone has the right, individually and in association with others to freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and to draw public attention to those matters;
- Article 12, (2) and (3), which provides that the State shall take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.

We would like to refer also to the Human Rights Council resolution 31/32 which in paragraph 2 calls upon all States to take all measures necessary to ensure the rights and safety of human rights defenders, including those working towards realization of economic, social and cultural rights and who, in so doing, exercise other human rights, such as the rights to freedom of opinion, expression, peaceful assembly and association, to participate in public affairs, and to seek an effective remedy. It further underlines in paragraph 10 the legitimate role of human rights defenders in mediation efforts, where relevant, and in supporting victims in accessing effective remedies for violations and abuses of their economic, cultural rights, including for members of impoverished communities, groups and communities vulnerable to discrimination, and those belonging to minorities and indigenous peoples.

Regarding allegations indicating that the violations could be an act of intimidation and reprisals against those who cooperate with the UN in the field of human rights, we would like to refer to Human Rights Council resolutions 12/2, 24/24, 36/21, and 42/28 reaffirming the right of everyone, individually or in association with other, to unhindered

access to and communication with international bodies, in particular the United Nations, its representatives and mechanisms in the field of human rights. In these resolutions, the Human Rights Council urges States to refrain from all acts of intimidation or reprisals, to take all appropriate measures to prevent the occurrence of such acts. This includes the adoption and implementation of specific legislation and policies [as well as the issuance of appropriate guidance to national authorities] in order to promote a safe and enabling environment for engagement with the United Nations on human rights, and to effectively protect those who cooperate with the United Nations. The Council also urges States to ensure accountability for reprisals by providing access to remedies for victims, and preventing any recurrence. It calls on States to combat impunity by conducting prompt, impartial and independent investigations, pursuing accountability, and publicly condemning all such acts.

Finally, we would like to highlight the UN Guiding Principles on Business and Human Rights, which were unanimously endorsed in 2011 by the Human Rights Council in its resolution (A/HRC/RES/17/31) following years of consultations involving Governments, civil society and the business community. The Guiding Principles have been established as the authoritative global standard for all States and business enterprises with regard to preventing and addressing adverse business-related human rights impacts. These Guiding Principles are grounded in recognition of:

- a. “States’ existing obligations to respect, protect and fulfil human rights and fundamental freedoms;
- b. The role of business enterprises as specialised organs or society performing specialised functions, required to comply with all applicable laws and to respect human rights;
- c. The need for rights and obligations to be matched to appropriate and effective remedies when breached.”

It is a recognised principle that States must protect against human rights abuse by business enterprises within their territory. As part of their duty to protect against business-related human rights abuse, States are required to take appropriate steps to “prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication” (Guiding Principle 1). In addition, States should “enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights...” (Guiding Principle 3). The Guiding Principles also require States to ensure that victims have access to effective remedy in instances where adverse human rights impacts linked to business activities occur.

The Guiding Principles also recognise the important and valuable role played by independent civil society organisations and human rights defenders. In particular, Principle 18 underlines the essential role of civil society and human rights defenders in helping to identify potential adverse business-related human rights impacts. The Commentary to Principle 26 underlines how States, in order to ensure access to remedy, should make sure that the legitimate activities of human rights defenders are not obstructed.