

**Comment by the Public Verdict Foundation**  
**on the Information received from the Russian Federation on follow-up to the Concluding Observations**

Having reviewed the Information submitted by the Russian Federation on the implementation of the recommendations set out in paras. 15, 17 and 29 of the Concluding Observations on the sixth periodic report of the Russian Federation under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, we find it appropriate to provide the following additional information to the Committee:

Para. 15 of the Concluding Observations

1. The information provided by the Russian Federation in respect of para. 15 of the Concluding Observations is extensive but non-specific and limited to a list of various government agencies without any reflection on their respective performance. This response fails to provide any details as to how these authorities coordinate their operations or how this entire system of state bodies works to reduce the practice of torture and ill-treatment.
2. Moreover, the Information received from the Russian Federation fails to address the situation with domestic investigations of torture and ill-treatment at police stations.
3. The submission prepared by the Public Verdict Foundation within follow-up procedure on the sixth periodic report of the Russian Federation to the UN Committee against Torture ([https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCAT%2fIFS%2fRUS%2f35743&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCAT%2fIFS%2fRUS%2f35743&Lang=en)) provides a detailed description of the current issues with the investigative authorities' response to reports of torture and ill-treatment both at police stations and in places of detention. We also offer specific examples of the relevant law enforcement practices along with our comments in the Submission.
4. The Information received from the Russian Federation fails to respond in any way to para. 15 (c) of the Concluding Observations. This omission can be interpreted to indirectly confirm that over the past year, the Russian Federation has not taken any steps to strengthen the capacity of the subdivision of the Investigative Committee tasked with investigating crimes committed by law enforcement officials and to enable the subdivision to effectively operate in all constituent entities of the Russian Federation.
5. The Information received from the Russian Federation offers an accurate but incomplete overview of how incidents of torture and ill-treatment in Russian penal colonies are investigated. The authorities admit that "The circumstances at the scene (i.e. a place of detention) virtually rule out the presence of witnesses or observers who are *not* interested in solving the criminal act which violates the rights of convicted and detained individuals." We should add to this that the administration of penal colonies has unlimited possibilities of interfering with the evidence, because all documents, including service reports, logs recording the use of special [riot control] devices, medical documents, and video surveillance footage, are produced inside the facility under full control of its administration.
6. **Instead of directly addressing the thoroughness of investigations and access to evidence in places of detention, the authorities find it sufficient to just refer the cases to experienced investigators. The Information does not mention any other measures taken to improve the quality of investigations.**
7. The standards of effective investigation require that such investigations must be independent, impartial and free from any conflict of interests. In its Information, the Russian Federation indicates that measures have been taken countrywide to ensure that investigations are commenced in a timely manner: "*Deputy chiefs of [every] regional FSIN (Federal Penitentiary Service) Division are tasked with reporting to investigative*

*departments the information about internal inquiries to be reviewed for indications of a criminal offence with subsequent initiation of formal criminal proceedings. In addition to this, the Order describes the mechanisms for combating attempts to conceal such facts without reporting them and for preventing violations of the convicted and detained persons' rights."*

8. This provision could be welcomed, but **in the absence of other measures**, it runs counter to the principle of impartial and independent investigation and contributes to the conflict of interests. We must add to this that the said rule is not new and has long featured in regulatory documents; however, the Public Verdict Foundation has yet to learn of a single instance of its application resulting in the institution of criminal proceedings against perpetrators of torture and in bringing them to justice.
9. The Information received from the Russian Federation mentions the June 2018 amendments to the Federal Law on Public Oversight of Human Rights in Places of Detention and on Assistance to Detainees, "which [the amendments] aim to expand the powers of members of public oversight commissions during their visits to places of detention and to improve the regulation of POCs' monitoring of human rights in places of detention" (page 9, paragraph 2 of the Information received from the Russian Federation, the numbering here and below based on the Russian text).
10. We need to note that effective monitoring of detention conditions by public oversight commissions critically depends on whether their access to places of detention and their independence during visits to the facilities are ensured in practice.
11. After the adoption of the 19 June 2018 amendments to the Federal Law on Public Oversight of Human Rights in Places of Detention and on Assistance to Detainees, FSIN drafted amendments to the Regulation that governs POC visits to penitentiary facilities (FSIN Order No. 652 of 28 November 2008). The most recent amendments to the Regulation were adopted on 18 March 2019.
12. A very important detail has been added to para. 13 of the new version of the Regulation: whenever POC members are discussing/inquiring about something which is not considered relevant to prisoners' rights, their conversation can be stopped. In other words, FSIN officials are allowed to determine, at their discretion, whether or not a certain issue is relevant to prisoners' rights. This grants FSIN virtually unlimited powers to interfere with POCs' work; thus, POCs have been effectively stripped of their function of assessing the situation in penitentiary facilities from the perspective of human/prisoner rights.
13. Para. 11 of the Regulation has been amended by a provision that the entire POC visit must be video-recorded to the accompanying officer's body camera. This rule effectively cancels the requirement of keeping all communications between POC members and prisoners confidential. In particular, the adopted amendments contravene article 23, part 2, of the Russian Penitentiary Code that allows POC members to talk to prisoners in such a way that the prison staff can observe but cannot overhear them. Today, there is a risk that the prison administration may learn the content of such communications from the recordings.
14. The new version of the Regulation, in para.15, requires that POC members must only use equipment owned by the penitentiary institution to shoot films, record videos or take photos inside the facility. If the penitentiary institution lacks such equipment or if the available equipment malfunctions, POC members are allowed to use their own devices to make films, videos or photos.
15. Thus, the Regulation supports the POC members' right to produce visual documentation of violations against suspects, charged detainees or convicted prisoners. But in order to exercise this right, POC members must use the technology owned by the penitentiary facility. The Regulation does not explicitly require FSIN to film anything or everything (except certain provisions concerning restricted-access security areas).
16. According to para. 15.7 of the Regulation, any recordings produced during a visit must be reviewed by the chief or another authorized officer of the penitentiary facility together with the POC members. Any recordings containing evidence of violations of the rights of suspects, charged detainees or convicted prisoners must be copied to a data storage

device provided by the POC members and handed over to them. In other words, the penitentiary staff once again enjoy discretion in deciding whether or not a certain situation captured on camera is evidence of a violation and consequently, whether a copy of the recording should be made available to the POC. This gives penitentiary institutions every opportunity to prevent POCs from obtaining documentary evidence of what POC members find to constitute violations which need to be included in their report following the monitoring visit.

17. Moreover, the new version of the Regulation does not mention any accountability of penitentiary officials. This makes the procedure totally unbalanced. In particular, while FSIN officials will have more control over the capture and use of video and photo evidence, they will be free from any responsibility needed for the new procedure to work properly. A few important provisions are lacking, specifically:
  - making the penitentiary service liable for malfunctioning photo and video equipment;
  - setting standards for such photo and video equipment so it may capture images which are of acceptable quality for official proceedings;
  - making the penitentiary facility liable for failing to preserve footage;
  - making the penitentiary facility liable for refusing to make available the recording from the accompanying prison officer's body camera.
18. The Regulation requires that any recording produced for POC members must be stored for two years. However, no timelines are set for the storage of recordings from the accompanying prison officer's body camera. It would be logical to require that such recordings from the officer's body camera should be stored for the same amount of time as those made for POCs. Moreover, there is no requirement that recordings from the officer's body camera must be made available to POC members.
19. Thus, the amended Regulation makes POC members dependent on prison administrations/ staff, contrary to the goals and objectives of public oversight.
20. The Information from the Russian Federation describes public councils attached to investigating authorities as an effective mechanism for preventing arbitrary use of violence in places of detention and mentions in particular once such public council with the Investigating Department of the Republic of Mordovia as an example (page 4, last paragraph). However, the Information fails to offer any examples to illustrate whether and how such public councils make a difference in terms of effective investigation of torture and ill-treatment.
21. The Information also mentions the role of Assistants to chiefs of territorial FSIN divisions tasked with overseeing human rights in the penitentiary system (page 7, paragraphs 2-5). The Information provides the statistics of visits/inspections (350 in 2019) resulting in three findings of violations, and of personal meetings (40 in 2019). Given that the total number of Russia's penitentiary facilities stands at 1,356, the aforementioned number of visits and meetings can hardly make a meaningful impact in terms of preventing arbitrary use of violence and/or riot control weapons by the penitentiary staff. In addition to this, the said Assistants responsible for human rights in the penitentiary system have very limited powers and are unable to initiate full-scale formal proceedings. They can only participate in internal inquiries and accept applications which do not have the legal status of a formal complaint and therefore cannot lead to an official investigation.

#### Para. 17 of the Concluding Observations

22. According to the Information from the Russian Federation, all of the 18 prison guards involved in torturing Yevgeny Makarov in Yaroslavl penal colony IK-1 on 29 June 2017 were dismissed from the penitentiary system as of 13 August 2019. However, according to information available to us, this is not true. Lawyer Irina Biryukova asserts that on 17 July 2019, at the time of the proceedings to extend the custody period for Igit Mikhailov, deputy chief for security and operations at IK-1, Mikhailov was suspended from duty rather than dismissed. The former chief of IK-1 Dmitry Nikolaev was not dismissed but left his job by handing in a letter of resignation.

23. The details provided by the Russian Federation concerning protection measures for Biryukova, her minor daughter, and Makarov are not accurate either. The Submission by the Public Verdict Foundation discussed on pages 12-14 why these measures of protection were ineffective. We can add to this that Makarov, finding the protection offered to him ineffective, has requested on many occasions that such measures be discontinued, but his request has not been satisfied. Besides, lawyer Biryukova did not send letters of thanks to government authorities. The only letter that she did send was addressed to the office of the Commissioner for Human Rights in the Russian Federation thanking the Commissioner and the office staff for assistance in defending Biryukova's rights and facilitating the decision to provide protection measures for her. The said letter was not - and could not have been - one of gratitude for the protection measures per se, because it was sent virtually on the next day after the decision to provide protection, before any such measures or their effectiveness could be determined. Indeed, Biryukova stated explicitly in her letter that the type of protection measures was yet to be defined. Subsequent experience revealed that the measures were ineffective, and the Public Verdict Foundation had to take steps to ensure protection for their lawyer.

#### Para. 29 of the Concluding Observations

24. The Public Verdict Foundation has repeatedly voiced its position regarding the violation of the freedom of association by the "foreign agents law" and the said law's discriminatory nature. We find it important once again to point out the falseness of the statement made in the Information from the Russian Federation to the effect that "we find it inappropriate to view the concept of non-profit organizations performing the functions of a foreign agent through the prism of infringement upon the rights of organizations financed from foreign sources" (page 12, paragraph 2). A review of federal and regional legislation conducted by the Public Verdict Foundation in March 2018 indicates that since the "foreign agents law" was adopted, more than 350 legislative norms have been introduced at the federal and regional levels (see [http://publicverdict.org/articles\\_images/NGO\\_regions\\_low.pdf](http://publicverdict.org/articles_images/NGO_regions_low.pdf) for the review in Russian) which are restrictive and discriminatory towards non-profit organizations labeled by the authorities as "foreign agents."
25. Moreover, Federal law No. 203-FZ of 19 July 2018 - which is highlighted in the Information from the Russian Federation as an example of the State's measures aimed at expanding the rights of POC members - prohibits NGOs included in the "register of foreign agents" from nominating candidates to Public Oversight Committees (article 10 (3) of Federal Law No. 76-FZ of 10 June 2008 on Public Oversight of Human Rights in Places of Detention and on Assistance to Detainees, as amended on 30 July 2018 by Law No. 203-FZ of 19 July 2018). As a result, since 30 July 2018, representatives of organizations included in the "foreign agents" register are not allowed to be part of public oversight commissions.