

**An Analysis of the Russian Government's Cover-Up  
Of the Torture and Murder of Sergei Magnitsky in Russian State Custody**

**Testimony before the European Parliament**

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Distinguished Members of the European Parliament, Ladies and Gentlemen,

I am grateful for this opportunity to speak before the European Parliament about a human rights tragedy that changed my life and continues to fuel my global quest for justice.

By now, many people have heard the story of what happened to my young Russian lawyer, Sergei Magnitsky. There have been thousands of reports and articles published worldwide, recounting his story in great detail. Magnitsky had discovered a corruption scheme perpetrated by Russian officials via an illegal tax refund of \$230 million to a criminal syndicate – the largest tax refund of state funds in Russian history. After he testified about the involvement of Russian government officials, going on the record to name names, the same officials arrested him on fabricated charges and tortured him for one year in their custody to try to force him to retract his incriminating testimony. Sergei Magnitsky refused to be coerced into signing a false confession that would implicate himself and me, his client, in a fictitious crime. He stood up for justice and, for this brave act, he died of torture while in pre-trial detention, shattering the perception that justice and the rule of law exist in Russia today. At the time of his death, Magnitsky was only 37 years old. He left behind a wife and two children, as well as a grieving mother to whom he was the only son.

Sergei Magnitsky's story struck a nerve both inside and outside of Russia. Here was an ordinary man who suffered the most shocking and inhumane cruelty while in police custody, the details of which are now part of the official record thanks to the 450 complaints Magnitsky filed during the 358 days of his pre-trial detention. He displayed exceptional integrity and stoicism in the face of extraordinary adversity, which is perhaps why his story is especially resonant. Indeed, it has compelled and inspired all sorts of individuals around the world to contribute to the Sergei Magnitsky Campaign for Justice.

It is difficult to read Sergei Magnitsky's letters from behind bars without shuddering. He dispassionately describes in minute detail how his captors treated him, comparing the experience to that of a labour camp prisoner. He talks about feeling like he has been run through a meat grinder; he writes that this kind of treatment strips a man of his dignity and his ability to comprehend reality. His detailed diary of life in custody reads like a modern-day Gulag Archipelago. Indeed, Russian human rights activists denounced what happened to Sergei Magnitsky in custody as "a cruel, premeditated murder."

The details of Magnitsky's year-long detention and torture have been summarised in reports published by the Council of Europe's Special Rapporteur; by REDRESS, an international NGO

with a mandate to assist victims of torture; by the U.S. Helsinki Commission; by the Moscow Public Oversight Commission, an independent watchdog of human rights in detention; and by the Moscow Helsinki Group, among others.

But what is less known, and what I would like to share with you today, are the dreadful details of how Russian government officials, law enforcement agents and cabinet ministers concealed and continue to protect the officials responsible for a massive financial crime against the Russian people, against my company, the Hermitage Fund, and finally, tragically, against an innocent man who tried to bring the criminals to justice.

## **I) The Cover-Up After Magnitsky's Death: A Non-Investigation**

The cover-up began on the day of Sergei Magnitsky's death: Monday, November 16, 2009.

Sergei Magnitsky died that Monday evening while still in pre-trial custody. The series of events which unfolded immediately before and following his death expose the clear and unmistakable signs of an organized cover-up.

That morning, Sergei Magnitsky's lawyers were refused access to their client – access that was guaranteed by Russian law and should have been granted. The official reason given by officials at Butyrka detention center, where Magnitsky was being held, was that he “fell ill and could not leave his cell.” Detention center officials shared his medical report with two Interior Ministry investigators, Oleg Silchenko and Sergei Oleinik, but the investigators refused to show the report to Sergei Magnitsky's lawyers, claiming that his medical diagnosis was an “internal matter of an on-going investigation.” The investigators likewise refused to reveal the contents of the medical report.

The following morning, November 17<sup>th</sup>, Sergei's mother, Natalia Nikolaevna, came to Butyrka detention center with food for her son, which is a common practice in Russia. Butyrka officials told her that her son had the previous day been transferred from Butyrka to a different detention center in Moscow, Matrosskaya Tishina. She was given no reason or explanation for this transfer. When she arrived at Matrosskaya Tishina later that day, Sergei's mother was informed that her son had died there the night before.

In the immediate aftermath of Sergei Magnitsky's death, there was much confusion in the statements issued by Russian officials, who seemed to be scrambling to form a unified story. The discrepancies in their early remarks point to an organized, institutional effort to cover up what happened.

**The first aspect of the cover-up involves the time and cause of Magnitsky's death.** On the morning of November 17<sup>th</sup>, when Sergei Magnitsky's lawyers first learned about his death, detention center staff stated that he had died at around 9 p.m. on November 16<sup>th</sup> of complications resulting from pancreatitis and pancreonecrosis, leading to toxic shock<sup>1</sup>. This was consistent with Sergei Magnitsky's previous medical diagnosis of pancreatitis, cholecystitis and gallstones, which he had been diagnosed with in detention in early July 2009, but which had gone untreated. It is a matter of public record that further examination and prescribed surgery were withheld during the four months following his diagnosis.

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<sup>1</sup> <http://www.kommersant.ru/doc/1276590?isSearch=True;>  
[http://www.rian.ru/general\\_jurisdiction/20091118/194326998.html;](http://www.rian.ru/general_jurisdiction/20091118/194326998.html)  
<http://www.newsru.com/russia/25nov2009/zdorov.html>

However, later that same day and before the autopsy was completed, the Russian Interior Ministry announced that the official cause of Sergei Magnitsky's death was sudden heart failure and not pancreatitis<sup>2</sup>. Furthermore, the official time of his death was now stated as 9:50 p.m., not 9 p.m., as Sergei Magnitsky's lawyers had been previously informed<sup>3</sup>.

The reason for the discrepancy in the time of death became clear later on, when **Magnitsky's family discovered the second aspect of the cover-up**. Detention center officials claimed that from 9:15 p.m. until 9:50 p.m. they had attempted to resuscitate Magnitsky. However, the family of Sergei Magnitsky was presented with **no objective evidence that resuscitation had** actually taken place.

News of Sergei Magnitsky's tragic death in state custody broke quickly and widely in the Russian media, inciting an immediate emotional response of shock and outrage. In response to numerous local and international press inquiries, an official spokeswoman for the Interior Ministry's Investigative Committee, Irina Dudukina, initiated the **third aspect of the cover-up: denial of any knowledge of Sergei Magnitsky's illness and of the rejection of medical care to him while he was in custody**.

On the first day after Magnitsky death, Dudukina publicly claimed that the Interior Ministry and Investigator Silchenko were not aware that Magnitsky had been ill, that Magnitsky had "never complained about his health," and that his "sudden" death "was a shock" for investigators.<sup>4</sup> This was despite the fact that Investigator Silchenko had two months prior to that signed the refusal for Sergei Magnitsky's request for a medical examination, records of which have since been made public.

**The fourth aspect of the cover-up was unfolding: Magnitsky's family was denied any access to the official autopsy.** In light of the contradictory information issued by Russian officials on the time and cause of Magnitsky's death, his family petitioned the Moscow City Prosecutor's Office to allow an independent pathologist to attend the official autopsy. The Prosecutor's Office rejected their request on the grounds that all pathologists are "equally independent." The family then requested permission to conduct an independent autopsy following the completion of the official one. The Prosecutor's Office once again rejected their request. They were not allowed to see Magnitsky's body until it reached the burial site.

That same week, Moscow Morgue No. 11 informed the Magnitsky family that morgue refrigerators were malfunctioning and were therefore not able to preserve Sergei's body at the low temperature required to prevent decomposition. The family requested that morgue officials transfer the body to another morgue in Moscow with a functioning refrigeration system but their request was denied.

The family requested the urgent release of Sergei's body in order to hold a traditional wake ceremony for his family and friends. The authorities refused this request as well, allowing Sergei's body to be released only on condition of immediate burial.

**The fifth aspect of the cover-up was the authorities' refusal to open a criminal investigation in the first week following Sergei Magnitsky's death,** ignoring two official petitions by Magnitsky's family.

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<sup>2</sup> <http://www.finansmag.ru/news/45168>; <http://www.interfax.ru/society/txt.asp?id=110496>

<sup>3</sup> <http://www.kommersant.ru/news/1276450>

<sup>4</sup> <http://www.stringer.ru/Publication.mhtml?Part=48&PubID=12433>

The family filed the first petition immediately upon learning of Sergei Magnitsky's death. The petition was filed with the Russian State Investigative Committee and the General Prosecutor's Office, requesting that they open a criminal inquiry. In their application, the family cited two officials in particular whom they held responsible for Sergei's death based on the evidence at hand: Investigator Silchenko, who had been in charge of Sergei Magnitsky's arrest and detention, and Fikret Tagiev, the head of Matrosskaya Tishina, the detention center where Sergei Magnitsky had abruptly died.

According to Russian law, such petitions must be reviewed immediately upon receipt and resolved with a decision to open or deny an inquiry within 72 hours (3 days). However, on November 20<sup>th</sup>, when the period for deliberation had expired, an inquiry had not been opened. The head of the Investigative Committee's Moscow branch, Anatoly Bagmet, publicly stated: "At this point there are no grounds to open an inquiry."<sup>5</sup>

During that first week following Magnitsky's death, the Prosecutor's Office equally did not insist, despite its authority to do so, that the Investigative Committee open a criminal inquiry. While announcing a procedural check into the provision of medical care in Matrosskaya Tishina following Magnitsky's death, the Prosecutor's Office failed to initiate a procedural check into Butyrka detention center, where Magnitsky had been held for four months, and where he was intentionally denied medical care.<sup>6</sup>

**The sixth aspect of the cover-up** was discovered by the Magnitsky family at the burial site, on Friday, November 20<sup>th</sup>, four days after his death. This was the first time they were permitted to see Sergei's body. There were clear bruises on his arms and visible signs that his fingers had been broken. On Monday, November 23<sup>rd</sup>, given **the evidence of bodily harm and injuries**, the Magnitsky family filed a second petition with the Russian Investigative Committee, requesting an investigation into the murder of Sergei Magnitsky while he was in police custody. Their application went unanswered.

A week after Sergei's death, on November 24<sup>th</sup>, 2009, after an appeal from Ella Pamfilova, the then-head of Russia's presidential Council on Human Rights, President Dmitri Medvedev asked Russian General Prosecutor Yury Chaika and Justice Minister Alexander Kononov to carry out an internal inquiry into Magnitsky's death.

This pushed the Russian Investigative Committee, which had until then refused to conduct a criminal investigation, to finally open a criminal case. However, it was opened only as an investigation into the negligence of unidentified persons leaving a patient without care: the case ignored the family's petition to investigate the physical abuse and murder of Sergei Magnitsky in pre-trial detention.

From the start, it was evident that this was essentially a non-investigation. By opening the case merely into negligence, the authorities were trying to avoid probing into why Sergei had been arrested by the very same officers against whom he had testified. They were trying to ignore the fact that Sergei Magnitsky had, prior to his arrest, accused those officers of abuse of office and criminal conduct. They were attempting to sweep under the rug the fact that the same officers whose names were recorded in Sergei's official testimony were then put in charge of his arrest and prolonged detention. It was clear that the authorities had no intent to investigate the corrupt officials whom Sergei had named in his testimony as having been complicit in the misappropriation of Hermitage Fund companies and the illegal refund of \$230 million in previously paid taxes. The case files simply did not name any of the suspects identified in the

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<sup>5</sup> [http://www.rian.ru/general\\_jurisdiction/20091118/194326998.html](http://www.rian.ru/general_jurisdiction/20091118/194326998.html)

<sup>6</sup> [http://www.rian.ru/general\\_jurisdiction/20091118/194326998.html](http://www.rian.ru/general_jurisdiction/20091118/194326998.html)

petition filed by Magnitsky's family. This was one of the most obvious indicators of the authorities' intention to conceal the crimes against Magnitsky and to protect the government officials involved in those crimes.

**In fact, the events surrounding the launch of this investigation was the seventh - and perhaps biggest – attempt to cover-up** what happened to Sergei Magnitsky.

The official investigation initiated under public pressure ignored - and continues to ignore - the most substantial evidence around the actual crimes: namely, the illegality of Magnitsky's arrest; the involvement of officers in his persecution who had a clear conflict of interest; the torture he was subjected to in custody; the denial of any legal rectification by all state bodies and judicial courts despite ample and undeniable evidence that his natural human rights, his freedom and his life were unjustly and illegally taken away while he was in pre-trial detention.

Today, eighteen months after his death, despite the overwhelming evidence of his torture in state custody, no torture investigation has been opened in Russia. This blatantly violates Russia's obligations under Article 12 of the United Nations Convention Against Torture that requires signatory states to conduct a prompt and effective investigation into any case of alleged torture:

*“Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.”*

## **II) Posthumous Accusations of Guilt**

**The eighth aspect of the cover-up of Sergei Magnitsky's death – and one of the most sinister turning points in this story – was implemented by the Russian Interior Ministry.**

On November 25<sup>th</sup>, nine days after Sergei Magnitsky died, which according to Russian tradition is a special day of mourning for the deceased, the Interior Ministry held a press conference. In breach of the principle of the presumption of innocence, Interior Ministry officials speaking at the press conference posthumously declared Sergei Magnitsky guilty of crimes for which he was never tried or convicted.

These accusations would have immediately fallen apart under the scrutiny of a fair and open trial. Sergei Magnitsky had no connection to the companies Interior Ministry officials were implicating in bogus tax crimes dating back eight years prior to the events at hand. Moreover, the companies in question had been audited, and tax authorities had found no violations. The case itself was initiated not by the tax authorities or even the Interior Ministry, but by the Russian Federal Security Service, or FSB.

Just last month, in April of 2011, members of the Russian President's Civil Society Council issued the first part of the conclusions of their independent investigation, which confirms that the case against Magnitsky had been fabricated with the involvement of the Russian Interior Ministry and the Federal Security Service (FSB).

Magnitsky had been determined to expose the truth in an open trial. From pre-trial detention, he filed complaints stating that Russian investigators were afraid to bring the case against him to trial, so evidently false was the basis for it and so illegitimate the motives. Magnitsky stated that investigators knew of his innocence and were pressuring him to perjure himself with a false

confession. In his petition to the Interior Ministry on September 11, 2011, two months prior to his death, Sergei Magnitsky wrote:

*“The criminal prosecution carried out against me was ordered to serve as retribution. The investigation of this case is being conducted with numerous violations of the law. On many occasions I presented the evidence that incriminates the members of the investigative group in the falsification of material evidence and of documents characterising me. On that basis, my defense lawyers and I have requested to disqualify and replace the investigators who have violated the law. The legal abuses committed by state officials have been repeatedly challenged to their superiors and to the courts. My position is obviously irritating for the investigators. It is impossible to justify the charges they brought against me, as I assert again that I did not commit any offenses, and the documents collected by the investigators prove my innocence. The expert opinions produced by experts working in state bodies with obvious conflict of interest, contain evidently false and partial conclusions invented to please the investigators. If this case were destined to go to trial, these experts would simply be unable to justify their conclusions during cross-examination by the defense counsel.*

*Realizing the invalidity of their claims, the investigators have arranged for physical and psychological pressure to be exerted upon me in order to suppress my will and then to force me to falsely testify against myself and other persons. In particular, the investigators repeatedly proposed that I testify against William Browder and in exchange they promised me “to receive a suspended sentence in court” and freedom. Every time, when again and again I reject these base propositions from investigators forcing me to be dishonest, the conditions of my detention become worse and worse ...*

*I am appealing against the illegal acts committed by the investigators, and by the administration of pre-trial detention center FBU IZ-77/2, which is supervised by the Moscow Penitentiary Service. These legal abuses include:*

- *My persecution organized by investigators to punish me for my refusal to falsely testify against myself and other persons under Case No. 153123;*
- *Assistance in the organization of my persecution by the investigators from the administration of detention centers by creating unbearable conditions for me in their facilities;*
- *My persecution by the administration of the detention centers in retaliation for my complaints and applications outlining the obvious abuses of my conditions in detention...*

*In light of the aforementioned, and the provisions of Articles 123-124 and Article 126 of the Russian Criminal Procedural Code, I hereby request to:*

- 1) *Terminate the persecution organized against me by the investigators of the investigative team under criminal case No. 153123.”*

In fact, in his last complaint filed with the Moscow courts, Sergei Magnitsky was seeking to bring to justice the officials who had blatantly falsified the case against him. In his last complaint, filed Friday, November 13, 2009, Sergei Magnitsky wrote:

*“It is now clear to me that the originals of certain documents in the materials of the criminal case shown to me as copies cannot be at the disposal of the investigation, therefore the certified copies of these documents, in my opinion, could be treated as falsified proofs, because they have been certified without comparing the copies admitted into the criminal case with the original of the corresponding document or other properly verified copy of the document, and I intend to*

*insist on bringing to justice the persons who certified these copies or placed them in the case materials.”*

Three days later, on Monday, November 16<sup>th</sup>, 2009, Sergei Magnitsky was pronounced dead.

His life was extinguished before he had the chance to defend himself. In the wake of his death, the same Interior Ministry officials who had falsely arrested and tortured him launched an organized campaign aimed to safeguard themselves from prosecution.

In an official statement issued on November 25<sup>th</sup>, 2009, the Russian Interior Ministry asserted that Magnitsky had been rightly arrested because “he had refused to cooperate with investigators,” and that he had been kept in pre-trial detention because he “continued to refuse to plead guilty.” Needless to say, these are illegitimate grounds as they assume a person has to incriminate oneself in order to avoid arrest. But the assertion serves as an insightful example of the desperate – and, at times, blatantly absurd - lengths officials have gone to in order to justify their criminality.

On November 30, *New Times*, an independent Moscow magazine, published the results of an autonomous journalist investigation into Magnitsky’s arrest and death in custody<sup>7</sup>. The journalists found that the Russian Interior Ministry, which was working in direct collaboration with the Russian Federal Security Service, coordinated the persecution of Magnitsky. Furthermore, the journalists found evidence that \$6 million had been paid in cash to organise the arrest of Sergei Magnitsky.

There is ample evidence that Alexei Anichin, the Deputy Interior Minister and head of the Interior Ministry’s Investigative Committee, coordinated Magnitsky’s persecution. Anichin is the most senior Interior Ministry official known to date who is also involved in the cover-up following Sergei Magnitsky’s death.

On December 23<sup>rd</sup>, 2009, one month after Magnitsky’s burial, Alexei Anichin held a press conference. Bypassing the presumption of innocence in what would become a trademark of the subsequent cover-up by Russian law enforcement, he pronounced Magnitsky posthumously “guilty” of the crime that had been used to justify his detention. Had the case gone to trial, had Sergei Magnitsky lived, Anichin’s false accusations and blatant attempts to blame an innocent man would have been much harder to make. He would have had to confront Sergei Magnitsky, who from his detention continued to expose the law enforcement officers who had committed egregious crimes against his client and the Russian people by embezzling \$230 million of public funds, and who were actively attempting to silence Magnitsky’s attempts to expose them.

In his official testimony from detention, Sergei Magnitsky described how the same law enforcement officers he had accused of wrongdoing were now involved in fabricating the grounds for his arrest and detention without trial. On October 13<sup>th</sup>, 2009, he wrote:

*“This prosecution is a repressive measure to punish me for assisting my client in connection with the investigation of the theft of the companies owned by my client... I believe that it was precisely the fabricated criminal case initiated by Kuznetsov that made it possible to confiscate the statutory documents and the registration documents of the stolen companies and made it possible to deprive the legal owners of their control over said companies.... The same officer, Kuznetsov, also provided his operative investigative support on case No. 374015, which was initiated by the*

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<sup>7</sup> <http://newtimes.ru/articles/detail/11454>

*Investigative Committee of the Prosecutor's Office on the subject of the theft of the said companies.*

*Kuznetsov also performed operative support on the criminal case under which I was pursued and accused, and I believe that the criminal persecution against me is the revenge of said person to punish me for my acts during the meetings with Gordievsky, the investigator of the Investigative Department of the Southern Administrative District of the Prosecutor's service in Moscow where I informed Gordievsky about said circumstances and expressed my opinion that it would be necessary to question Kuznetsov about the circumstances of the theft of "Rilend", "Mahaon", and "Parfenion" instead of allowing him to perform the operative support of the case instigated by Gordievsky.*

*The direct personal interest of Kuznetsov in the illegal criminal prosecution against me is also evidenced by the fact that all documents used as a legal basis for detaining me in custody were forged, and the case file documents were fabricated by Tax Crime Department officers, who are the subordinates of Kuznetsov: Drozanov, Krechetov, and Tolchinsky. Obviously they forged the documents on the order of Kuznetsov ... Everything stated in that report, including the specified date of its drafting, is an absolute and obvious lie, which has been used for the purposes of discrediting me, and to create false grounds for the justification of my arrest...*

*In my view, Kuznetsov and other law enforcement officers who acted in complicity with Kuznetsov, could be involved in the theft of "Rilend", "Mahaon", and "Parfenion", and in the subsequent theft of 5.4 billion rubles from the state budget as described above. They were extremely interested in the suppression of my activities, which I performed to assist my client in the investigation of the circumstances of the case involving their criminal offences, and that was the reason for the illegal criminal prosecution that was initiated against me by Investigator Silchenko.*

*I believe that the inhuman and degrading conditions of the pre-trial detention ward were created for me with the involvement of Investigator Silchenko O.F., or with his tacit consent."*

The silencing of Magnitsky in detention was carried out in part by the systematic denial of medical care, which is now in the public record. Magnitsky had filed numerous complaints both about his deteriorating health and the abysmal conditions of his detention.

A particularly shocking complaint, dated September 11, 2009, was addressed directly to Anichin, Investigator Silchenko and General Prosecutor Chaika. In it, Magnitsky and his lawyers detailed the horrifying pressure that was applied in an attempt to break his will:

*"Having realized the unsustainability of their claims, the investigation effectively organized the exertion on Magnitsky of physical and psychological pressure with the aim to suppress his will and subsequently to force him to falsely testify against himself and other persons. Magnitsky has on multiple occasions appealed the violations of his rights by detention authorities, including*

- 1) The non-provision of medical examinations and sanitary provisions on arrival at the detention center;*
- 2) The non-provision of medical care... non-performance of medical examinations and prescribed surgery."*

Despite the litany of complaints, Deputy Interior Minister Anichin, speaking at the December 2009 press conference, denied any knowledge by him or his subordinates of Magnitsky's deteriorating state of health in pre-trial detention, or of the complaints Magnitsky had filed

detailing the state's systematic denial of medical care to him. Anichin claimed that he had reviewed 111 of the complaints Magnitsky had filed while in pre-trial detention and "not a single complaint contained anything to do with the health or conditions of detention"<sup>8</sup>.

Today Anichin continues to play an active role in the concealment of facts and the protection of corrupt and criminal government officials. No investigation has been initiated into the role he played in Sergei Magnitsky's death and he continues to maintain his position of power.

### **III) The Ostensible Dismissal of Prison Officials**

**The ninth aspect of the cover-up was the appearance of the immediate punishment of prison officials.** Following the death of Sergei Magnitsky, President Medvedev announced in December of 2009 that he was dismissing nineteen officials of the prison system in an ostensible shake-up of the system. Some tied this development to Magnitsky's death. However, a simple analysis of the titles of the fired officials shows that eighteen of them worked in unrelated branches and regions thousands of miles away from where Sergei Magnitsky had been detained, and were not connected to or involved in his incarceration whatsoever.

Furthermore, senior Russian detention center officials themselves publicly admitted that the firing of prison officials was not an actual firing: the large majority of those officials were merely reappointed to other posts, promoted, or transferred to new regions; the rest went into retirement but were able to keep their pensions and even received honors for their service.

The one official who was actually culpable in the death of Sergei Magnitsky, and who faced nominal public reprimand, was Vladimir Davydov, the head of the Moscow pre-trial detention center system. Even so, the only consequence he faced for his involvement was that he was simply not reappointed to his post.

It was to Vladimir Davydov and to Dmitry Komnov, the head of the Butyrka detention center in Moscow, who was directly responsible for the daily torture of Sergei Magnitsky, that Magnitsky appealed to, and whose abuse he challenged in numerous official complaints and petitions.

In his September 11, 2009 complaint, Sergei Magnitsky wrote:

*"I have filed numerous complaints to appeal against the gross abuse of my rights by the administration of detention centers:*

- 1) I have not been given a primary medical examination or sanitary treatment upon my transfer to the pre-trial detention center;*
- 2) I have been denied medical care, which is evidenced by the fact that I was allowed to see a doctor for the first time only 30 days after my written application about it. I have also been denied a medical examination and the scheduled surgery, which had earlier been prescribed to me;*
- 3) I am detained in holding cells after participating in court hearings in inhumane conditions, where up to 70 to 80 people are detained in small spaces of only 20-22 m<sup>2</sup> for 3 or 4 hours, also at night time.*
- 4) I have filed other complaints about the violations of my custody conditions, which are in contradiction to the Internal Regulations of the Department of Detention Centers.*

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<sup>8</sup> [http://www.infox.ru/accident/crime/2009/12/23/Dyelo\\_Magnitskogo\\_za.phtml](http://www.infox.ru/accident/crime/2009/12/23/Dyelo_Magnitskogo_za.phtml)

*The majority of my complaints were either rejected by the detention center's administration or simply not considered at all.*

*Thus, on 31 August 2009, I drafted a written complaint addressed to the Moscow Department of the Federal Service for Sentence Execution [headed by Vladimir Davydov] and submitted it the next day. The subject of that complaint was that the administration of the detention center does not provide opportunity for detainees to submit their daily proposals, complaints and applications, and hot water is not supplied to the cells in the detention center despite the fact that hot water pipes are available in all cells.*

*On the same day, 1 September 2009, I was transferred from cell No. 267, in which I was detained from 25 July 2009, to cell No. 59. As a result of this transfer, my detention conditions deteriorated significantly. Specifically:*

*1) Cell No. 59 does not adhere to the legal minimum space of 4m<sup>2</sup> per person as established by Article 23 of the Federal Law of 15/07/1995 No.103-FZ. The space of the cell is about 8.2 square meters; and 4 persons are detained in it;*

*2) The facilities of the cell do not satisfy the requirements outlined by p. 42 of the Internal Regulations of the Department of Detention Centers, as approved by order of the Russian Ministry of Justice on 14.10.2005 under No.189.*

*Specifically:*

- The cell is not equipped with a table and benches with seating sufficient to the number of the persons detained in the cell. The table can accommodate one person only;*
- The cell has no shelf for storing toilet accessories, a wall mirror is missing, and there is no radio set, TV or refrigerator;*

*3) The facilities of the cell do not satisfy the current sanitation and hygiene requirements:*

- The toilet bowl is not separated by a partition from the other parts of the cell. To avoid using the toilet in the presence of their cellmates, the detainees have to use their bed linen as a screen, which after this can certainly not be used again for its intended use;*
- The only electrical sockets in the cell are installed directly above the toilet bowl and detainees have to prepare their hot drinks practically in the toilet area;*
- The toilet bowl in the cell is installed close to the wall, and the platform under the bowl is so small, that each use of the toilet is torturous and requires certain acrobatic skills;*
- No hot water is supplied to the cell. No hot water is provided for washing clothes and for other hygienic purposes. Boiled drinking water is not provided to the cells in the detention center, but the administration says that detainees can purchase kettles and electric water boilers in the detention center's shop in order to boil water. However, not at all detainees have the opportunity to do this. Hence, the persons detained in cell No. 59, when I was transferred to that cell, did not have a water heater or a working kettle. This also happened to me. When I was transferred to this center, I spent 6 days without access to boiled water as my electric water boiler was kept in the storage for personal belongings, and was not given to me during all that time, despite my numerous written and oral requests for it.*

*The substantial deterioration of detention conditions is a form of persecution, carried out, among others, by detention center administration in retaliation to my complaints about these conditions, because the conditions worsened following my complaint. Such persecution is directly prohibited by Article 6 of the Federal Law of 02.05.2006: "On the Procedure for the Consideration of Applications from Citizens". This persecution is illegal and violates my rights protected by Articles 33 and 21 of the Russian Constitution, and Articles 4,17,21 and 23 of the*

*Federal law of 15.07.1995: "On the Custodial Detention of Persons Suspected or Accused of Committing Offences."*

*On the grounds outlined above, I am appealing against the illegal acts committed by the investigators, and by the administration of the pre-trial detention center FBU IZ-77/2 [Butyrka detention center]."*

In December of 2009, the head of Butyrka, Dmitry Komnov, was dismissed. This was initially seen as a signal of action and reform. However, three weeks later Komnov was reappointed as Deputy Head of Medved, a detention center in Moscow that is approximately a half hour's drive from the same Butyrka where Magnitsky had been tortured.

Komnov's replacement at Butyrka, Sergei Telyatnikov, later blatantly told the Magnitsky family that no evidence of the violation of Sergei's constitutional rights had been found at Butyrka.

#### **IV) Petitions Seeking Justice Rejected**

**The tenth element of the state-wide cover-up of Magnitsky's torture and death is evidenced by the fact that Russian authorities summarily and systematically rejected all petitions from Magnitsky's family, his colleagues, and independent human rights activists and journalists seeking to open a real probe into the crimes surrounding Magnitsky's death: i.e. to investigate the circumstances of the arrest and torture of Magnitsky, to prosecute the Interior Ministry officials involved in Sergei's persecution, and, based on the evidence Magnitsky unearthed, to bring to justice the criminals involved in the organized tax fraud that robbed the Russian treasury and the Russian people of \$230 million.**

Each and every petition was rejected or ignored on the pretence that the Russian Investigative Committee was conducting an ongoing investigation into the negligence of unidentified persons in the care of Magnitsky during his detention.

On December 28, 2009, the Moscow Public Oversight Commission (MPOC), which is mandated by Russian law to monitor human rights compliance in detention centers, concluded following a five week independent investigation that Sergei Magnitsky had been subjected to torturous conditions while in custody, that physical and psychological pressure had been exerted upon him, and that his right to life had been violated by the Russian state.

After conducting a series of interviews with detention center officials, the MPOC also found substantial discrepancies and contradictions in the accounts of detention center officials, and concluded that it indicated a cover-up of what had happened to Sergei Magnitsky on his last day. The MPOC sent its conclusions to the General Prosecutor's Office, the Investigative Committee, the Ministry of Justice, the Federal Penitentiary Authority, and the Presidential Administration. To date, they have not received any official response to their findings.

In March of 2010, Ludmila Alexeeva, Chairwoman of the Moscow Helsinki Group, an independent Russian human rights organisation, petitioned for the opening of an investigation into Magnitsky's false arrest, torture and murder while in custody. She named police officers (Silchenko, Kuznetsov, Drozanov, Krechetov, Tolchinsky, among others) and submitted evidence gathered by the MPOC and Magnitsky's family, as well the official complaints Sergei Magnitsky had filed while in detention.

In June of 2010, the Russian Investigative Committee rejected her petition. They claimed to have questioned the police officers involved and found no sign of criminal wrongdoing. The public responded with a massive outcry, demanding that the criminals responsible for Sergei's murder be brought to justice. The Investigative Committee made vague promises to re-evaluate Alexeeva's petition, but no inquiry has been opened to date.

In July of 2010, Jamison Firestone, Sergei Magnitsky's boss at the law firm Firestone Duncan in Moscow, submitted evidence to the Russian Investigative Committee that Lt. Col. Artem Kuznetsov and his family had acquired assets worth \$3 million soon after the \$230 million tax fraud, which Magnitsky had uncovered. The assets amounted to 467 years of Kuznetsov's official Interior Ministry salary. Firestone requested that the Investigative Committee open a criminal inquiry.

He filed a similar complaint in regards to Major Pavel Karpov, the second officer Sergei Magnitsky had testified against. Major Karpov and his immediate family became \$1.3 million richer after the fraud. The assets now in his and his family's accounts amounted to 202 years of his official Interior Ministry salary.

But the Investigative Committee refused to consider these applications as crime reports and forwarded them to the Russian Interior Ministry, where these same officers work. The Interior Ministry then claimed to have found no evidence of wrongdoing. Both agencies unabashedly ignored the original testimony submitted by Sergei Magnitsky to the Russian Investigative Committee – the testimony which led to his arrest, subsequent torture and death – in which he had exposed the involvement of police officers Lt. Col. Artem Kuznetsov and Major Pavel Karpov in illegally seizing the documents of the Hermitage Fund's Russian companies as part of a major criminal conspiracy to misappropriate those companies and defraud the Russian government of \$230 million of previously paid taxes.

In addition, Jamison Firestone appealed directly to the Interior Ministry's Internal Security Department to conduct an internal investigation into the sudden and unusual attainment of wealth by officers Kuznetsov and Karpov and their families. The Interior Ministry's Internal Security Department responded to Firestone's petition by stating that such an investigation was outside of their purview, that it was by law the job of the Investigative Committee, and that they had no authority to launch a probe into the matter since they do not have the power to request tax declarations of their officers and their families. In other words, both the Investigative Committee and the Interior Ministry claimed it was the other's responsibility to open an inquiry, which resulted in no further investigation of the officers.

During 2010, Russian anti-corruption activist Alexei Navalny also filed a series of petitions asking authorities to investigate the circumstances around Magnitsky's arrest, including the involvement of the Federal Security Service and the alleged payment of \$6 million to organize his detention. His petitions have all been rejected.

Alexei Navalny also filed a petition asking authorities to investigate the abundance of evidence that suggests officers Kuznetsov and Karpov, along with their families, profited from the theft of \$230 million from the Russian treasury uncovered by Sergei Magnitsky. That petition was also rejected.

Not coincidentally, Alexander Burov, an official in the General Prosecutor's Office, rejected the petitions. Burov is the same official who was involved in the authorization of Sergei Magnitsky's arrest and prolonged pre-trial detention.

## V) Concealment of Criminality at Senior Levels

By this stage of the Magnitsky story, the conspiracy to cover-up the crimes of Russian government officials responsible for the false arrest, torture and murder of Sergei Magnitsky extends to all branches of the Russian state apparatus and reaches its most senior levels.

In June of 2010, Oleg Logunov, the head of the legal department in the General Prosecutor's Office (who at the time of Magnitsky's detention was deputy head of the Interior Ministry's Investigative Committee) gave an interview to a local Moscow radio station in which he claimed that he was not aware of Magnitsky's medical condition and that Magnitsky had never filed any complaints about his health. Echoing the Investigative Committee's December rhetoric, he pronounced Magnitsky "guilty."

Human rights activists vehemently rebuked Logunov and a public scandal subsequently erupted in the Russian media. Back peddling on their original stance, the General Prosecutor's Office qualified Logunov's very public remarks as those of "a private citizen" and removed the transcript from the agency's official website.

Nevertheless, in July of 2010, the head of the Interior Ministry's Investigative Committee, Alexei Anichin, made another public statement via an interview to Echo of Moscow radio, posthumously declaring Magnitsky to be guilty. Anichin also cynically claimed that he and his officers had "suffered most" from Magnitsky's death.

In September of 2010, Alexander Bastrykin, chairman of the Russian Investigative Committee, and the senior most Russian official in charge of the official inquiry into the Magnitsky case, dismissed any notion that officials had been involved in his death, citing comprehensive evidence gathered in the form of Magnitsky's complaints and examinations by medical experts.

In what was perhaps the most shocking development, around the one-year anniversary of Magnitsky's death, the Russian Interior Ministry also awarded top state honours to the officers involved in Magnitsky's persecution, including Silchenko, Karpov, Vinogradova and Dudukina.

Then, on November 16<sup>th</sup>, 2010, the anniversary itself, the Russian Interior Ministry made another move to accuse Sergei Magnitsky of the very crime which he had uncovered – the theft of the \$230 million. The new posthumous accusations were aired at a press conference by official Interior Ministry spokesperson Irina Dudukina, who previously denied that Magnitsky ever complained about his illness while in custody. As evidence, she cited the testimonies of two convicts with previous ties to law enforcement officers and whom Magnitsky had exposed for their complicity in the \$230 million theft. The convicts and police officers Magnitsky had implicated - Kuznetsov and Karpov - had all been named by their victims in a kidnapping and extortion case one year prior to the execution of the tax fraud.

In January of 2011, Alexander Matveev, the senior Interior Ministry official who had extended Magnitsky's detention shortly before his death, again publicly asserted that Sergei Magnitsky had not complained about his health while in detention.

It is inconceivable that, 18 months after Magnitsky's death and with ample evidence that Magnitsky's requests for medical care were repeatedly and systematically denied while he was in pre-trial custody, high-ranking officials with direct knowledge of the case continue to deny the facts.

In fact, Magnitsky had filed over twenty requests calling attention to his deteriorating condition, including several requests filed with the Interior Ministry's Investigative Committee. But Investigator Silchenko formally rejected the petitions Magnitsky and his lawyers had filed for medical care. To justify this blatant violation of human rights, the Russian Interior Ministry claimed that Magnitsky had not requested to be released from detention due to his health, and furthermore that the need to conduct a medical examination was outside the purview of the investigators charged with the case.

This was in direct contradiction to Article 24 of the Russian Law on Detention, which stipulates that both detention center officials and Interior Ministry investigators have the authority to order a medical examination for a patient in custody whose health is deteriorating. Likewise, this is completely inconsistent with the public record of Magnitsky's testimony before Investigator Silchenko in court hearings that continued to prolong his pre-trial detention. Magnitsky specifically requested to be released for the very fact that he was growing increasingly ill while continuing to be denied medical care by his captors.

Yet, again, in March of 2011, Yuri Kalinin – who headed Russia's Federal Penitentiary Service at the time of Magnitsky's incarceration and is now a Senator in the Russian parliament – claimed that, according to his information, Magnitsky had received medical care for diagnosed diseases and had no issues regarding the need for medical assistance.

In March of this year, the Russian Interior Ministry finalised the cover-up of the complicity of its officials in the \$230 million theft that Magnitsky had uncovered by formally closing the case. The officials who had seized and kept custody of the documents used in the fraud, and the tax officers who had approved the illegal refund – all of them named in Magnitsky's testimony – were absolved of any wrongdoing.

The only two people who were held responsible by the Russian Interior Ministry for the largest illegal tax refund in Russian history were a sawmill employee who had been previously convicted for murder, and an unemployed drug addict who had been previously convicted for burglary. They were sentenced in a collapsed proceeding, where no evidence was presented or heard, and they received a minimum sentence of five years each. Victor Grin, the Deputy General Prosecutor of Russia, issued the sanction for these proceedings.

Perhaps not coincidentally, the official in charge of this investigation was the same official – Investigator Silchenko – who had Magnitsky arrested under fabricated accusations, and tortured in custody in an effort to get him to rescind his testimony against the officials. The officers carrying out the investigation on Silchenko's team were Lt. Col. Kuznetsov and his three subordinates.

## **VI) Campaign For Justice**

Given the clear and absolute impunity of Russian officials involved in state-level corruption and crimes against humanity, a global campaign was launched to bring the officials responsible for these heinous acts to justice and to set an example of warning for those who steal, torture and kill but face no consequences. The Sergei Magnitsky Campaign for Justice is supported worldwide by politicians, lawmakers, human rights activists, journalists and ordinary citizens.

In April of 2010, the U.S. Helsinki Commission issued a list of the sixty Russian officials who were evidenced to have participated in the \$230 million theft, arrest, torture and death of Sergei Magnitsky. The Helsinki Commission requested that the U.S. Department of State deny these individuals entry visas to the U.S. pursuant to Presidential Proclamation 7750.

In May of 2010, the European Home Affairs Commissioner raised the Magnitsky case with Russian Justice Minister Alexander Kononov and Russian Interior Minister Rashid Nurgaliev.

In June of 2010, the President of the European Parliament raised the Magnitsky case with Russian President Dmitri Medvedev and the Chairman of the Russian State Duma, Boris Gрызlov.

The Magnitsky case was included in each session of the EU-Russia consultations on human rights.

In August of 2010, World-Check, an international consulting firm that helps leading international banks fight against money laundering, blacklisted the sixty Russian officials in the Magnitsky case for their roles in the \$230 million theft, and for his subsequent torture and death in custody.

In September of 2010, fourteen leading Russian human rights activists signed a petition calling on the United States and European Union to introduce visa and other sanctions against the Russian officials involved in the Magnitsky case.

On September 30<sup>th</sup>, 2010, The Justice for Sergei Magnitsky Act was introduced on the floor of the United States House of Representatives. The act calls for visa and economic sanctions against the same sixty officials culpable in corruption, in the death of Magnitsky, and in the subsequent cover-up.

In October of 2010, the European Commission issued a statement calling the Magnitsky case a litmus test of President Medvedev's presidency.

On the anniversary of Magnitsky's death in 2010, a documentary film commemorating his life was shown in six parliaments around the world.

On November 12, 2010, Transparency International posthumously awarded Magnitsky the Integrity Award for his fight as a single individual against government corruption in Russia.

## **VII) Russia's Response: Impunity At Home**

Until now, the international campaign to bring to justice those responsible for the unjust and premature death of Sergei Magnitsky has not led to the prosecution of the Russian officials involved. It has resulted instead in targeted attacks against the individuals calling for justice.

Russian authorities continue to target Hermitage executives and all of the Hermitage Fund's outside counsel by bringing unlawful criminal cases against them based on false evidence in an attempt to pressure them into silence and acquiescence. Hermitage lawyers and executives have received numerous death threats.

These unremitting and unlawful acts of intimidation and harassment of innocent citizens, as well as the aforementioned falsified criminal proceedings, have been the subject of numerous appeals from national and international human rights organisations and legal associations throughout the last four years. However, the situation has not improved – indeed, it is only getting worse.

In March of this year, acting on a petition filed by the Hermitage Fund, the Swiss Attorney General opened a criminal investigation into evidence that points to the Russian officials who carried out the \$230 million tax fraud using Swiss Banks to launder the money. Furthermore, the related bank accounts were frozen as part of the investigation.

In what appears to be a clear retaliation, the Russian Interior Ministry has now sought an arrest in absentia of my colleague, Hermitage executive Ivan Cherkasov. On May 4<sup>th</sup> of this year, Tverskoy district court judge Alexandra Kovalevskaya approved a petition signed by Investigator Silchenko, the same investigator who arrested, tortured and killed Sergei Magnitsky. This politically motivated act violated both domestic and international law and it was executed in the absence of any evidence.

On May 10<sup>th</sup>, Investigator Silchenko also sent summonses to me, breaching both legal and procedural norms.

Finally, on May 20<sup>th</sup>, eighteen months after the death of Sergei Magnitsky, at a meeting with EU Home Affairs Commissioner Cecilia Malstrom, Russian Justice Minister Alexander Kononov attacked Sergei Magnitsky, stating that: “Magnitsky’s innocence still remains in question. Let’s not yet make an innocent victim out of him.”<sup>9</sup>

It seems incredible that a Justice Minister would so brazenly dismiss the innocence of a man who died at the hands of the police and therefore cannot defend himself. But there seem to be no boundaries to the cynicism and corruption driving the cover-up operation for one of the biggest financial crimes in recent Russian history, and one of its most devastating human rights tragedies.

The ostensible investigation into Magnitsky’s death has stretched on for eighteen months but it remains, officially, in the “preliminary” phase. The investigation period has now been extended numerous times. The fourth official medical examination has dragged on for eight-and-a-half months. The previous three official medical examinations all concluded that Magnitsky died of sudden heart failure, and that no one was involved in his death. In the meantime, the protracted fourth examination has been used as a pretext to stall the case until August 24<sup>th</sup>, 2011. Eighteen months after Sergei Magnitsky’s murder in state custody, the investigation remains cold, with no named suspect and no charges.

Moreover, Russian officials have refused to even acknowledge that Magnitsky was pressured to rescind his testimony in custody. They have not, 18 months after Sergei’s death, opened an investigation into his torture. They have failed to admit to the problem, so the question remains how or even if they will they address it.

The result is that the Russian officials specifically involved in Magnitsky’s prosecution and death have shown that they still enjoy broad impunity:

- Victor Grin, the Deputy General Prosecutor of Russia, who absolved the officials implicated in Magnitsky’s testimony of any wrongdoing, remains in his job.
- Alexei Anichin, the Deputy Interior Minister and head of the Interior Ministry’s Investigative Committee, who bears the ultimate responsibility for Magnitsky’s incarceration, remains in his job past the legal retirement age.

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<sup>9</sup> <http://www.pravo.ru/news/view/54283>

- Victor Voronin, head of the FSB department that fabricated false evidence in order to arrest Sergei Magnitsky by claiming that he was a flight risk who had applied for a UK visa, still holds his position and was most recently involved in further attacks on Hermitage, including the arrest in absentia of Ivan Cherkasov.
- Oleg Silchenko, the investigator who was in charge of Magnitsky's detention, who consistently denied his requests for medical care and family visits, has amassed even more power. Silchenko was honored as Best Investigator of Russia and promoted: from Major to Lt. Col.
- Colonel Vinogradova, who supervised Investigator's Silchenko's persecution of Magnitsky and rejected Magnitsky's official complaints, still holds her position. She was awarded the official state honor of "Best Investigator" on the one-year anniversary of Sergei Magnitsky's death.
- The Interior Ministry's spokesperson Irina Dudukina, who denied any knowledge of Magnitsky's illness and complaints, was likewise honoured on the one-year anniversary of Magnitsky death.
- Lt. Col. Kuznetsov, implicated by Magnitsky in the theft of Hermitage Fund companies and \$230 million from the Russian treasury, and directly involved in the case against Magnitsky, was promoted.
- Major Karpov, also implicated by Magnitsky in the theft of Hermitage Fund companies and \$230 million, was promoted and honored as "Best Investigator" on the one-year anniversary of Magnitsky's death.
- Oleg Logunov, Deputy Head of the Interior Ministry's Investigative Committee at the time of Magnitsky's arrest, and the official who appointed Lt. Col. Kuznetsov and his three subordinates to investigate the case against Magnitsky and further authorised Magnitsky's arrest and prolonged detention, was named head of the Legal Department of the General Prosecutor's Office.
- Andrei Pechegin and Alexander Burov, the General Prosecutor's Office officials who rejected Magnitsky's complaints about pressure in detention, still hold their positions.
- Dmitry Kratov, Deputy Head of Butyrka, who was directly responsible for the medical care of his patients, and who refused to provide it to Magnitsky, was reappointed as a doctor at Butyrka.
- Larisa Litvinova, a doctor at the Butyrka detention center, who withdrew medical care from Sergei Magnitsky while his health deteriorated at an unnatural rate, and refused to conduct even the most basic medical tests. She has changed jobs but remains an employee of the Russian penitentiary system.
- Fikhret Tagiev, head of Matrosskaya Tishina, where Magnitsky was ultimately killed, and where the circumstances of his death were covered up, remains in his position.
- Doctor Alexandra Gaus, who left Magnitsky writhing in pain without any medical supervision, and abandoned him for an hour and eighteen minutes to be handcuffed and beaten in his last hours, is still in her job.

## VIII) Time For Consequences

Ladies and Gentlemen, today I testify before you about crimes committed by Russian officials in the Sergei Magnitsky case.

This is a clear and emblematic case study of the depth and reach of corruption in Russia. The justice system is broken and criminalised. Officials in high places steal from their own country's coffers with impunity, brazenly murder the innocent people who stand in their way, and use the very system that is meant to protect ordinary citizens to protect themselves in their crimes.

Given the involvement of the most senior government officials in the persecution of Sergei Magnitsky and in the cover-up after his death, it is inconceivable that an investigation by Russian authorities alone could produce a fair and unbiased investigation free from interference by the very same senior state officials whose livelihood rests in the balance. Thus far, their actions speak louder than their words. The officers directly implicated by Magnitsky have been honoured and promoted. No admission of his torture has been made. No one has been charged or prosecuted for his death.

It is the responsibility of the countries where the rule of law serves to protect ordinary people - and where strong democratic systems assure citizens of their basic human rights - to condemn these inhumane and heinous acts, and to impose measured consequences on those who committed them.

In the U.S., the Justice for Sergei Magnitsky Act was submitted to the United States House of Representatives in April of this year, imposing visa and economic sanctions on the Russian officials involved in the Magnitsky case. An extended bill, The Sergei Magnitsky Rule of Law Accountability Act, was introduced in May of 2011 in the U.S. Senate. The bill was expanded to impose sanctions on all persons involved in extra-judicial killings, torture and gross human rights abuses.

On December 16<sup>th</sup>, 2010, the European Parliament adopted a resolution calling for EU-wide visa sanctions against those Russian officials involved in the Magnitsky case. The resolution requests that the law enforcement bodies of EU member states cooperate in freezing the assets of the aforementioned officials on EU territory.

I call upon you to reiterate your call to the European Commission to act now and to act in concert to create real consequences for those who abuse human rights with impunity and for whom even the words 'human rights' remain hollow.

This will send a strong message of hope to the thousands of innocent victims of crimes in the world who continue to suffer in silence. It will give them a prospect of justice.

Thank you.