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Russian Federation: Freedom of Association under a New Attack

On 26 June 2012, a group of six members of the lower chamber of the Russian parliament, State Duma, from the pro-Kremlin United Russia party, tabled a draft Federal Law 'On Introducing Changes to Certain Pieces of Legislation of the Russian Federation as Regards Regulation of Activities of Non-Commercial Organizations Performing the Functions of Foreign Agents'. The draft bill was approved by the Duma in the first hearing held on 6 July, and in the second and third hearings on 13 July. It will need to be approved by the parliament's upper chamber, Soviet Federatsii, and signed by the president before it takes effect.

The legislative changes to the laws and regulations governing activities of non-governmental organizations (NGOs) in Russia signify further stifling of civil society activism in Russia, reduction of democratic space and unlawful restrictions on freedom of association. Once enacted, they will result in significant administrative hurdles, increased bureaucratic pressure, undermined financial viability and reduction of independence of NGOs, and create new channels for the authorities to subject independent civil society organizations throughout the country to arbitrary harassment and pressure.

The newly adopted law requires all Russian NGOs which receive foreign funding, financially or in-kind, directly or via a Russian funding organization (which in turn is in receipt of foreign funding), to register as a "non-commercial organization performing the functions of a foreign agent". The changes further specify that the requirement applies specifically to those NGOs (but not political parties) which "engage in political activity".

These legislative changes are widely regarded by their numerous critics to be directed primarily against NGOs working on issues such as human rights violations, corruption, abuse of the electoral system and environmental protection. A further indication that this is the real focus and purpose of the law is the qualifying clause that only those NGOs which engage in political activity will be required to register as organizations "performing the functions of foreign agents". This clause clarifies that an NGO

is regarded as participating in political activities if, regardless of the goals and objectives stated in its founding documents, it is involved (including through financing) in organizing and conducting political activities in order to influence decision-making by public authorities aimed at changing public policies pursued by them, as well as in shaping public opinion for such purposes.

Such a broad definition clearly extends the scope of the new legislative provisions to a very wide range of civil society organizations, including virtually any human rights NGO, however independent of any political ideology and unassociated with any commonly understood political objectives (such as for example electoral mobilization or pursuit of electoral success). The same definition embraces many other organizations, including charitable ones, for example those seeking to influence public policy on issues ranging from homelessness or child welfare to cultural heritage.

An Attack on Freedom of Association

The newly adopted law has the potential to unlawfully restrict the right to freedom of association of NGOs receiving foreign funding by threatening NGOs, as well as individual members thereof, by means of introducing a series of additional and excessively onerous administrative requirements and harsh administrative and criminal penalties for failure to adhere to them. The authors of the bill argued in the accompanying note that it was intended to provide transparency and “adequate public control” over foreign-funded NGOs engaging in political activities on the territory of the Russian Federation. This argument however disregards the fact that all NGOs working in Russia are already subject to substantive regulations and obliged by the Federal Law ‘On Non-Commercial Organizations’ to report to the relevant registration and tax authorities on their activities as well as submit financial reports, and provide a report on their activities via the internet and make such information available to others on request. The relevant state authorities already have substantive powers to conduct financial and other inspections, as well as other checks, on the Russian and foreign NGOs working in the Russian Federations.

Under the new bill, NGOs will be required to inform the relevant authorities of both their intended “political activities” and intended “activities in the capacity of a foreign agent”, and to do so before the NGO benefiting from foreign funding engages in either of these activities, or face severe penalties.

The NGOs which will have to register as organizations “performing the functions of foreign agents” under the newly adopted law will also be obliged to submit to the relevant registration authorities (currently, the Federal Registration Service) a detailed report on their activities twice every year and a comprehensive financial report every quarter, as well as undertake a compulsory financial audit once a year. All this will increase very significantly the already considerable administrative burden on the NGOs, as well as involve significant financial costs, thus diverting vital resources from the organizations’ core activities. These NGOs will be also subject to regular (maximum once a year) inspections and, additionally, ad hoc inspections if they fail to submit the required reports on time, are suspected of extremism (a charge which under the existing anti-extremism legislation is sometimes applied arbitrarily in Russia, including against legitimate civil society organizations), or upon the receipt a complaint against the relevant NGO by the Prosecutor’s Office (including from a private individual).

Failure to comply with any of the above requirements will result, under the new legislative changes, in severe administrative and criminal penalties, including heavy fines (ranging between RUR 3,000 and 300,000 for individuals, and up to RUR 1,000,000 for organizations, depending on the nature of the violation) and even imprisonment of certain NGO members (for up to two years for “malignant failure” to register as an organization performing the functions of a foreign agent”).

These changes threaten the right to freedom of association, which is guaranteed in the Universal Declaration of Human Rights and numerous international and regional treaties to which Russia is a party. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others. The government has failed to demonstrate that the proposed measures are necessary to address any legitimate aim, and the combination of onerous administrative requirements and severe penalties introduced through the newly adopted law pose a real risk of violating NGOs’ right to freedom of association, as well as creating considerable scope for the arbitrary application of such penalties. As the Special Rapporteur on the Situation of Human Rights Defenders has noted, “[a]mbiguity of requirements, lack of transparency, burdensome and lengthy procedures all have the potential of restricting the right to freedom of association.”¹

¹ Report of the Special Rapporteur on the Situation of Human Rights Defenders, A/64/226 (2009), para. 54.

The UN Special Representative of the Secretary-General on Human Rights Defenders has pointed out that in contexts similar to those prevailing in Russia currently where there are “limited resources available for human rights organizations at the local level, legal requirements of prior authorization for international funding have seriously affected the ability of human rights defenders to carry out their activities.”² Although the proposed legislation does not expressly require such prior authorization, its application will serve as a deterrent to many NGOs in their fundraising efforts. Article 13 of 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 states “Everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means.”

A “smear campaign” against NGOs

In spite of all the assurances to the contrary, this legislative innovation appears politically motivated and intended primarily to target the work of NGOs independent or critical of the government. In various interviews given to the media, the authors of the law and senior Russian officials have denied political bias of these proposals and indicated that the requirement to register as an organization “performing the functions of a foreign agent foreign agent” is modeled on the US Foreign Agent Registration Act, and as such should not be seen as an initiative directed against any part of Russian civil society.

However, the choice of wording – *inostrannyi agent* in Russian – will inevitably raise strongly negative connotations for any native speaker in connection with the NGO concerned. Compelling an NGO by law to brand its work as a “functions of a foreign agent” and requiring that any publication produced and circulated by the relevant NGO, in hard copy or via the internet, must state that it is produced by an organization performing such functions, seems designed to delegitimize the work of NGOs by insinuating that human rights NGOs or other civil society voices independent or critical of the government in fact serve foreign powers.

This requirement clearly appears as another step taken by the Russian authorities in the ongoing smear campaign against critical civil society organizations whose work has raised critical issues with the government and the parliament. Over the recent years, and particularly in the months which followed the 2011 Parliamentary and 2012 Presidential elections, this accelerating smear campaign has included, amongst other things, discrediting public statements and broadcasting on the national television of provocative, deliberately misleading and defamatory information on the activities and objectives of certain NGOs (including human rights NGOs) or their leaders. This particularly concerned those NGOs which are known for their work on combating human rights violations, corruption, abuse of the electoral system and environmental protection.

The new legislative changes, once enacted, will further increase the already strong powers of supervision and control by the authorities of civil society in Russia, and signify another serious blow to its vibrancy and independence, and in some cases the very existence of NGOs.

NGOs in Russia engage in activities and provide vital public services in a wide range of areas, from human rights to education, from social support to environmental activism. Civil society activism has grown very significantly in Russia since the break-up of the Soviet Union. With domestic sources of funding to civil society activities being sparse and unstable, and a significant portion of it provided by the government, selectively and overwhelmingly to loyal or “non-political” NGOs, foreign funding plays a vital role as a lifeline for many civil society organizations, big and small. Many of these NGOs deliver some key services to the Russian public and are indispensable to safeguarding human rights in Russia any contributing to the

² Report of the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani, A/59/401 (2004), para. 77.

country's further political, economic and social progress. Many will be forced to choose between accepting foreign funding and being subject to these oppressive new regulations, or foregoing the funding and risking their very existence. There is also the risk that many funders will no longer be willing to invest in the development of Russia's civil society under the new legislative changes.

Background

The current changes have been swiftly introduced, and many of the law's critics have pointed out that there has been neither the intention on the part of their authors in the State Duma and of the Russian government, nor the space, to hold a public debate about them.

The draft bill was quickly submitted for consideration by the Duma and approved in three hearings in the course of just one week. As a further indication of the political significance of this initiative for the Russian authorities and their defiance to the wide and harsh criticism which came from wide sections of the Russian society against these changes and their authors, the entire United Russia faction signed the then draft bill as co-sponsors, which was an unprecedented move within the Russian legislature.

This is already the second time in Russia's recent history that independent civil society becomes the target of stifling legislative changes, both occurring under Vladimir Putin's leadership as President. On 10 January 2006, he signed into law legislative changes which imposed additional reporting requirements and restrictions upon NGOs in Russia. These changes gave the authorities increased powers of scrutiny of the funding and activities of NGOs in Russia. The law was widely criticized, including by Amnesty International (<http://amnesty.org/en/library/info/EUR46/031/2006/en>), as unduly burdensome, diverting resources from substantive programmes, making key provisions which lacked a precise legal definition and could be applied arbitrarily, and introducing disproportionately harsh sanctions. These regulations were relaxed under Dmitry Medvedev who succeeded Vladimir Putin as President in 2008. The legislative changes currently proposed are still more restrictive than those initially introduced in 2006.

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