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PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

UNITED NATIONS
OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders.

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REFERENCE: OL G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9)
RUS 5/2012

11 July 2012

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; and Special Rapporteur on the situation of human rights defenders pursuant to Human Rights Council resolution 16/4, 15/21, and 16/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received regarding the **draft Law on Introducing Amendments to Certain Legislative Acts of the Russian Federation Regarding the Regulation of Activities of Non-commercial Organizations Performing the Functions of Foreign Agents, which unduly restricts the right to freedom of association**. The first reading of the draft law was held on 6 July 2012. The second reading is scheduled on 13 July.

First, we would like to underscore that the above draft law is part of a series of recent legislative reforms and amendments which indicate a pattern of increasing restrictions being imposed on the rights to peaceful assembly and of association. As an example, the adoption of new legislation curtailing basic freedoms was the subject of a previous communication sent on 20 June 2012 regarding the amendments to the Code on Administrative Violations and to the Federal Law on Assemblies, Meetings, Demonstrations, Processions and Picketing by the Special Rapporteur on the rights to freedom of peaceful assembly and of association, the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. This pattern is extremely worrying to us as it illustrates regress in respecting and protecting these rights.

According to the information received:

On 29 June 2012, a group of Members of Parliament from the United Russia party submitted the **draft law on Introducing Amendments to Certain Legislative Acts of the Russian Federation Regarding the Regulation of Activities of Non-commercial Organizations Performing the Functions of Foreign Agents** to the State Duma.

The draft law contains amendments to a number of federal laws, including the Law on Public Associations, the Law on Non-commercial Organizations, the Law on Counteracting Legalization of Incomes received in a Criminal Way and against the Financing of Terrorism, and the Code of Administrative Penalties, the Criminal Code and the Code of Criminal Procedure.

Article 1 of the proposed draft law amends the Law on Public Associations, requiring public associations (non-commercial organizations) to register with an authorized body before engaging in political activities and receiving foreign funding. These organizations will be registered as “non-commercial organizations performing the functions of foreign agents”.

Article 2 amends the Law on Non-commercial Organizations also defining Russian non-commercial organizations (NCOs) receiving foreign funding as “non-commercial organizations performing the functions of foreign agents”. The amendments further consider NCOs as “engaging in political activities” if they take part “in the organization and staging of political actions” to influence public policy or public opinion. While this definition is too broad, it could potentially target all advocacy activities carried out by NCOs in an effort to bring public policies in line with international human rights standards or sensitize public opinion about such standards. Furthermore, the draft stipulates that the process for registering NCOs is to be determined by an “authorized government agency”, without specifying it in the law. Failure to detail the procedure in the law might result in an excessively burdensome and complex registration process, which may further obstruct legitimate human rights activities.

Any material published by NCOs considered as “foreign agents”, “shall be accompanied by a note to the effect that such material unpublished (distributed) by a non-commercial organization performing the functions of a foreign agent”. This requirement is mandatory regardless of whether the production of this material received foreign support. Forcing to label every material can lead to a stigmatization of activist, human rights defenders and civil society organizations, as the term “foreign agent” can be perceived as carrying negative connotations.

Strict monitoring measures will be applied for NCOs considered as “performing the functions of a foreign agent”. In particular, these NCOs will be required to

report on activities and report on expenditures of assets on a semi-annual and quarterly basis, respectively. The law does not specify which reporting forms will be required.

In terms of foreign non-commercial and non-governmental organizations operating in the territory of the Russian Federation, the new amendments also require an “auditor’s report from a Russian audit organization” or individual Russian auditor, unless otherwise specified by an international agreement with the Russian Federation; and to make it public, via the authorized body’s internet website or by providing to the media for mass publication. In addition, regular scheduled and unscheduled checks on NCOs will be carried out by the authorized Government body. If an NCO receiving foreign support and conducting political activities fails to register as a “foreign agent”, the Government will have the authority to suspend its activities for up to 6 months.

Article 3 amends the Federal Law on Countering the Legalization of Criminal Income received in a Criminal Way and against the Financing of Terrorism. Mandatory supervision will be undertaken if the foreign funding received “exceeds 200,000 rubles, or is equal to or exceeds the equivalent of 200,000 rubles in a foreign currency”. While such a requirement is disproportionate, the draft law also fails to specify the terms for such supervision or the manner in which it can be carried out.

Article 4 amends the Code of Laws on Administrative Offences. Penalties for non-submission of information (data) to a public agency or official or for submission of “incomplete or distorted information” can range from: fines of 3,000 to 5,000 rubles for private persons; 30,000 to 50,000 rubles for officials; and 500,000 to 1 million rubles for legal entities. In case of conducting activities as a foreign agent without the required registration, the penalty is from 300,000 to 500,000 rubles for individuals and up to 1 million rubles for legal entities.

In the event of publishing material without the required acknowledgement that such material is published by a NCO performing the functions of a foreign agent, the fine is from 300,000 to 500,000 rubles for officials and 500,000 to 1 million rubles for legal entities. Should activities be carried out by suspended NCOs, the fines range from 30,000 to 50,000 rubles for organizers and from 3,000 to 5,000 for each participant.

The amount applicable for these penalties is also disproportionate and can deter civil society organizations from conducting legitimate activities. Moreover, the term “incomplete or distorted information” is excessively vague, which can lead to abusive interpretations.

Article 5 amends the Criminal Code. The amendment introduces penalties for NCOs or foreign non-commercial and non-governmental organizations for

“instigating citizens to refuse to perform civil duties or to perform other unlawful acts”; these penalties consist in a fine of up to 200,000 rubles or restriction of liberty or forced labour or incarceration for a period of up to three years. Participation in activities as well as acts of propaganda instigating citizens to abstain to perform “civil duties” or other “unlawful acts” can be punished with a fine of up to 120,000 rubles, or restriction of liberty or forced labour or incarceration of up to two years. In the event that a deliberate evasion of duties connected with the obligation to submit documents is found, penalties range from a fine of up to 300,000 rubles or mandatory community service of up to 480 hours, or correctional labour or incarceration of up to two years.

Finally, the draft law contains no transitional provisions for NCOs to comply with the new legal requirements. This will imply that once the draft law comes into force after 90 days of its publication, the responsible Government authority will be able to start enforcing its provisions. There is no information on what procedures will be required, including during the interim period, to comply with the new requirements and leaves the responsibility to specify them to a delegated Government body.

We would like to express our serious concern with the amendments contained in the draft Law on Introducing Amendments to Certain Legislative Acts of the Russian Federation Regarding the Regulation of Activities of Non-commercial Organizations Performing the Functions of Foreign Agents. Should these amendments be adopted, they may arbitrarily limit the enjoyment of the right to freedom of association. We are very preoccupied that such legislation may be put in place to hamper the legitimate work of human rights defenders and civil society organizations. If adopted, these amendments could have damaging effects on civil society organizations and the right to freely associate in the Russian Federation.

We would like to call on your Excellency’s Government to ensure that the right to freedom of association as recognized under article 21 of the International Covenant on Civil and Political Rights (ICCPR) is adequately respected, including the ability of associations to access to funding freely and without undue obstacles. We would like to recall the recommendations of the Special Representative of the Secretary-General on the situation of human rights defenders in that “Governments must allow access by NGOs to foreign funding as a part of international cooperation, to which civil society is entitled to the same extent as Governments” (A/59/401, para. 82). Moreover, and in line with the Special Rapporteur on the rights to freedom of peaceful assembly and of association’s 2012 thematic report to the Human Rights Council, we reiterate that “any association...should have the right to seek and secure funding and resources from domestic, foreign, and international entities, including individuals, businesses, civil society organizations, Governments and international organizations” (A/HRC/20/27 para. 68).

In terms of the definition of Russian non-commercial organizations receiving foreign funding as “non-commercial organizations performing the functions of foreign agents”, we would like to draw to your attention the negative obligation of States with regard to freedom of association. “States have a negative obligation not to unduly obstruct the exercise of the right to freedom of association. Members of associations should be free to determine their statutes, structure and activities and make decisions without State interference”. Moreover, “(a)uthorities must also respect the right of associations to privacy as stipulated in article 17 of the Covenant on Civil and Political Rights. In this connection, authorities should not be entitled to: condition any decisions and activities of the association; reverse the election of board members; condition the validity of board members' decisions on the presence of a Government representative at the board meeting or request that an internal decision be withdrawn; request associations to submit annual reports in advance; and enter an association's premises without advance notice” (A7HRC/20/27 paras 64-65, respectively).

Furthermore, the 2009 report of the Special Rapporteur on the situation of human rights defenders to the General Assembly stipulates that “human rights organizations that are independent and whose objectives and activities are not in violation of the International Covenant on Civil and Political Rights should have the right to engage in activities for the benefit of their members and for the public; and should be free to participate in public policy debates, including debates about and criticism of existing or proposed State policies or actions. Any limitations, within these parameters, including lists of permitted and prohibited activities, are incompatible with the right to freedom of association. Accordingly, no distinction regarding the types of permitted activities should be made between national and foreign organizations” (A/64/226, para. 122).

We wish to appeal to your Excellency's Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the International Covenant on Civil and Political Rights, which provides that “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.” In this connection, we wish also to draw the attention of your Excellency's Government to the principle enunciated in Human Rights Council Resolution 12/16, which calls on States, while noting that the exercise of the right to freedom of opinion and expression carries with it special duties and responsibilities, to refrain from imposing restrictions which are not consistent with article 19, paragraph 3 of the ICCPR, including on (i) discussion of government policies and political debate; reporting on human rights, government activities and corruption in government; engaging in election campaigns, peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups.

In this connection, we would like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of

Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that “everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels” and that “each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice”.

Furthermore, we would like to bring to the attention of your Excellency’s Government the following provisions of the Declaration:

- article 5 points b) and c) which provide that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right to form, join and participate in non-governmental organizations, associations or groups, and to communicate with non-governmental or intergovernmental organizations;

- article 8, paragraph 1, which stipulates that everyone has the right, individually and in association with others, to have effective access, on a non-discriminatory basis, to participation in the government of his or her country and in the conduct of public affairs; and

- article 13 which stipulates that 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 freedom, through peaceful means, in accordance with article 3 of the declaration.

Moreover, as it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your cooperation in clarifying the following matters:

1. Please provide information on how the aforementioned amendments are in line with your obligations under international human rights law, particular with article 21 of the ICCPR.
2. Please provide information on how the aforementioned legislation facilitates the work of organizations, activists and other individuals working to protect and promote human rights.

Considering the worrying pattern of amending legislations so as to restrict the right to freedom of association, and the upcoming 2nd Parliamentary hearing of this draft law which may leave insufficient time for it to be meaningfully debated with civil

society, we wish to inform you that we also intend to express publicly the above mentioned concerns so as to also notify Russian public opinion of such concerns.

We would appreciate a response as soon as possible. Your Excellency's Government response will be made available in a report to the Human Rights Council for its consideration.

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

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