

Mandates of the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur in the field of cultural rights; 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; the Special Rapporteur on the independence of judges and lawyers; and the Independent Expert on human rights and international solidarity

Ref.: AL RUS 13/2021
(Please use this reference in your reply)

24 November 2021

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; Special Rapporteur in the field of cultural rights; 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; Special Rapporteur on the independence of judges and lawyers; and Independent Expert on human rights and international solidarity pursuant to Human Rights Council resolutions 43/16, 46/9, 43/4, 41/12, 44/8, and 44/11. .

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the impending involuntary liquidation of the human rights organisations International Memorial Society and Human Rights Center "Memorial", as well as recent federal legislation that was signed into effect in December 2020, further expanding the list of actors that can be designated "foreign agents" to include unregistered NGOs and individuals, regardless of nationality.

International Memorial Society ("International Memorial") is an international association of non-governmental organisations and individuals. It conducts research, monitors and documents human rights violations, promotes access to information including on past human rights violations, the development of civil society and democracy, and carries out educational activities.

Human Rights Center "Memorial" ("HRC Memorial") is a Russian non-governmental organisation. It conducts research, monitors, documents and publicises human rights violations, engages in human rights education, promotes access to information, including on past repressions, defends vulnerable groups whose rights are systematically violated, and provides a platform for debate and free legal assistance to victims of social, ethnic or religious conflicts, refugees, displaced and internally displaced persons.

We previously wrote to your Excellency's Government regarding International Memorial and HRC Memorial in four communications sent on 20 June 2014 (RUS 5/2014), 14 November 2014 (RUS 9/2014), 7 February 2018 (RUS 3/2018) and 14 January 2020 (RUS 9/2019). We thank your Excellency's Government for the responses received to all of these communications.

The adoption and application of the Federal Law on Introducing Amendments to Certain Legislative Acts of the Russian Federation Regarding the Regulation of Activities of Non-Commercial Organisations Performing the Functions of Foreign

Agents (“Foreign Agent Law”) was the subject of previous communications sent on 11 July 2012 (RUS 5/2012), 13 June 2013 (RUS 3/2013), 18 December 2013 (RUS 13/2013), 20 June 2014 (RUS 5/2014), 25 September 2014 (RUS 7/2014), 14 November 2014 (RUS 9/2014), 7 August 2015 (RUS 4/2015), 25 February 2016 (RUS 2/2016), 14 April 2016 (RUS 4/2016), 11 August 2016 (RUS 8/2016), 29 March 2017 (RUS 3/2017), 17 July 2019 (RUS 5/2019) and 13 August 2021 (RUS 9/2021). We acknowledge the replies from your Excellency’s Government dated 23 July 2012, 19 February 2014, 25 August 2014, 24 November 2014, 17 December 2014, 16 November 2015, 23 May 2016, 31 May 2016, 14 October 2016, 5 June 2017, 13 September 2019 and 12 October 2021, however, we remain concerned given the allegations below.

According to the information received:

The Ministry of Justice included HRC Memorial on the state register of “foreign agent” non-governmental organisations on 21 July 2014, and International Memorial on 4 October 2016, subjecting both of them to the requirements of the Foreign Agent Law, including additional reporting and marking their materials.

On 11 November 2021, International Memorial received a letter from the Supreme Court informing them that on 8 November 2021 the Prosecutor General’s Office had filed a lawsuit seeking their liquidation over repeated violations of the Foreign Agent Law. The lawsuit claimed that the organisation and its leadership carried out their activity “with repeated gross violations of the Constitution of the Russian Federation and federal laws” and “committed a flagrant violation of citizens’ rights”. To substantiate the accusation, the Prosecutor General’s Office referred to twenty administrative fines imposed on the organisation and its leadership in late 2019-2020 for failure to mark some of its materials (several webpages, social media posts and books) as produced by “foreign agent”. The court hearing regarding International Memorial’s liquidation is scheduled for 25 November 2021.

On 12 November 2021, HRC Memorial received information from the Moscow City Court that on 8 November 2021 the Moscow City Prosecutor’s Office filed a similar lawsuit against them. The Moscow City Prosecutor’s Office referred to eight administrative fines imposed on the organisation and its leadership in late 2019-2020 for failure to mark some of its materials (several webpages and social media posts) as produced by “foreign agent”, as well as some reporting violations in 2015-2020.

The lawsuit also stated that some of the HRC Memorial’s materials justified extremism and terrorism. The materials in question included the guidelines regarding the interpretation of the term “political prisoner” (formulated on the basis of Resolution 1900 (2012) of the Parliamentary Assembly of the Council of Europe) and the lists of people HRC Memorial considered “political prisoners” based on their research. The materials also included five publications about terrorism and extremism cases analysed by HRC Memorial, in which they outlined the signs of falsifications, torture, and violations of the right to a fair trial. HRC Memorial’s case analysis include the following disclaimer: “The recognition of a person as a political prisoner or persecuted on political grounds does not mean that HRC Memorial agrees with their

views and statements, nor does it endorse their statements or actions”. Also, the definition of a “political prisoner” used by HRC Memorial explicitly excludes anyone who encouraged violence or committed a violent offence.

The preliminary court hearing regarding HRC Memorial’s liquidation was scheduled for 23 November 2021.

On 12 November 2021, state-controlled television channel NTV issued a report accusing the organisations of supporting terrorists and “radical groups” and serving dangerous “sects”.

Without wishing to prejudge the accuracy of the information received, we wish to express serious concern at the liquidation proceedings brought against International Memorial and HRC Memorial, which appear to be aimed at preventing the organisations from continuing their human rights work and levied against them in response to such work, including research and publications on human rights issues and commemoration of past violations. Moreover, the actions taken against them appear manifestly disproportionate in regard to the irregularities upon which they are, for the most part, based.

We also reiterate our concern about the consistently negative effects of the implementation of the Foreign Agent Law and call for its repeal or substantial amendment, to bring it in line with the Russian Federation’s human rights obligations. In particular, we remain concerned about the highly detrimental impact of the Foreign Agent Law on civil society, within a broader crackdown on human rights defenders and civil society organisations, particularly those with dissenting opinions, exercising their rights to freedom of association and freedom of opinion and expression in the country.

The 2020 and 2019 reports of the Secretary-General on cooperation with the UN in the field of human rights noted the effects that restrictive legislation, in particular laws on “foreign agents” or “undesirable organizations,” have had on the willingness and ability of civil society actors to engage with international bodies, especially with the UN. These include the N 121-FZ Foreign Agent Law for Non-Commercial Organizations, adopted in July 2012 and amended in June 2016 (N 147-FZ and N 179-FZ). It also includes several pieces of federal legislation that were signed into effect on 30 December 2020 further expanding the list of actors that can be designated “foreign agents” to include unregistered NGOs and individuals, regardless of nationality. Reportedly, media is prohibited from publishing any information about such NGOs and unregistered public associations without indicating that they are included in the register of “foreign agents.” Federal Law No. 538-FC reportedly introduced a five-year prison sentence for libel, which had been criminalized in 2012, and Federal Law No. 525-FZ reportedly introduced criminal liability for malicious violation of the duties of a “foreign agent” with a penalty of up to five years in prison. On 5 April 2021, Bills No.1052327-7 and 105895-7 were adopted and published, reportedly introducing amendments and penalties for non-compliance with the norms mentioned above. The operations of civil society organizations have reportedly been subject to particular scrutiny, specifically their receipt and use of foreign funding. The High Commissioner for Human Rights, in her oral update to the Human Rights Council on 25 February 2021, regretted the entry into force in late 2020 of new legal provisions further limiting fundamental freedoms and the growing expansion of the definition of ‘foreign agent.’ Reportedly, the

enforcement of the aforementioned legislation, as well as the new pieces of federal legislation, have further contributed to self-censorship and reluctance of civil society to engage with the UN. While some civil society organizations have continued to cooperate with the UN, including from outside the country, some human rights defenders reportedly decline international attention, including by the UN, to their issues or situations for fear of retaliation.

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

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and comments you may have on the above-mentioned allegations.
2. Please provide the legal and factual bases for the lawsuit against International Memorial and HRC Memorial and how these are in compliance with the Russian Federation's obligations under international human rights law.
3. Please provide information on measures taken by your Excellency's Government to ensure that human rights defenders and civil society organizations are able to carry out their legitimate and peaceful work freely in an enabling and safe environment, without fear of threats or acts of intimidation and harassment of any kind.

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

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

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

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Alexandra Xanthaki
Special Rapporteur in the field of cultural rights

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

Clement Nyaletsossi Voule
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Diego García-Sayán
Special Rapporteur on the independence of judges and lawyers

Obiora C. Okafor
Independent Expert on human rights and international solidarity

Annex

Reference to international human rights law

While we do not wish to prejudge the accuracy of these allegations, we call the attention of your Excellency's Government to Articles 19 and 22 of the International Covenant on Civil and Political Rights ("ICCPR"), ratified by the Russian Federation on 16 October 1973, which guarantee the right to freedom of opinion and expression and the right to freedom of association, as well as Article 15 paragraph 1 (a) of the International Covenant on Economic, Social, and Cultural Rights, ratified by your Government on 16 October 1973, recognizing the right of everyone to take part in cultural life, which includes the right to access cultural heritage.

We would like to further remind your Excellency's Government that Article 22 (2) of the ICCPR provides that 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. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right. The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights also state in para. 30 that national security cannot be invoked as a reason for imposing limitations to prevent merely local or relatively isolated threats to law and order.

Article 19 of the ICCPR guarantees the right to freedom of expression, which includes "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". Under Article 19 (3) of the ICCPR, any restriction on the right to freedom of expression must be: (i) provided by law; (ii) serve a legitimate purpose; and (iii) be necessary and proportional to meet the ends it seeks to serve. In this context, we would like to recall that in its General Comment no.34, the Human Rights Committee emphasized that article 19 protects inter alia, political discourse, commentary on one's own and on public affairs, discussion on human rights, journalism, cultural and artistic expression, teaching and religious discourse among others. The rights to freedom of opinion and expression also form the basis for the full enjoyment of a wide range of other human rights, including the right to freedom of association, as also stated in General Comment no.34. In this connection, we recall that the Human Rights Council, in its Resolution 12/16, called on States to refrain from imposing restrictions which are not consistent with article 19(3), including: discussion of government policies and political debate; reporting on human rights; engaging in peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups.

We wish to emphasise that any restrictions to the exercise of these rights must be provided by law and be necessary and proportionate to the legitimate aim. As the Human Rights Committee observed in General Comment No. 27 (CCPR/C/21/Rev.1/Add. 9), "restrictive measures... must be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve the desired result; and they must be proportionate to the interest to be protected" (Paragraph 14).

The Special Rapporteur on the rights to freedom of peaceful assembly and of association indicated in a report that “[t]he suspension and the involuntarily dissolution of an association are the severest types of restrictions on freedom of association. As a result, it should only be possible when there is a clear and imminent danger resulting in a flagrant violation of national law, in compliance with international human rights law. It should be strictly proportional to the legitimate aim pursued and used only when softer measures would be insufficient” (A/HRC/20/27, para. 75).

The Special Rapporteur on the rights to freedom of peaceful assembly and of association in a report further called upon States “[t]o ensure that associations – registered and unregistered – can seek, receive and use funding and other resources from natural and legal persons, whether domestic, foreign or international, without prior authorization or other undue impediments, including from individuals; associations, foundations or other civil society organizations; foreign Governments and aid agencies; the private sector; the United Nations and other entities” (A/HRC/23/39, para. 82 (b)). He also called upon States to “recognize that undue restrictions to funding, including percentage limits, is a violation of the right to freedom of association and of other human rights instruments, including the International Covenant on Economic, Social and Cultural Rights” (A/HRC/23/39, para. 82 (c)), and to “recognize that regulatory measures which compel recipients of foreign funding to adopt negative labels constitute undue impediments on the right to seek, receive and use funding” (A/HRC/23/39, para. 82 (d)).

In connection with article 15 of the ICESCR, we would like to draw your Excellency’s Government’s attention to the reports of successive Special Rapporteurs in the field of cultural rights relating to the right of access to and enjoyment of cultural heritage (A/HRC/17/38) and to the protection of cultural heritage (A/HRC/31/59 and A/71/317). The mandate holders have stressed that the right of access to and enjoyment of cultural heritage includes: (a) the right to know, understand, enter, visit, make use of, maintain, exchange and develop cultural heritage, as well as to benefit from the cultural heritage and the creation of others, and (b) the right to participate in the identification, interpretation and development of cultural heritage. In this connection, they have recommended that States recognize and value the diversity of cultural heritages present in their territories and under their jurisdiction, and acknowledge, respect and protect the rights of individuals and groups to feel associated (or not) with specific elements of cultural heritages; to access, enjoy and continuously (re)create the cultural heritages that are meaningful to them; and to transmit this heritage to future generations.

We would like to recall the importance of memorialization processes concerning serious human rights violations and the transmission of knowledge about the harm suffered by victims of such crimes. To this effect, we draw the attention of your Excellency’s Government to the work of the Special Rapporteur in the field of cultural rights on the issue of historical and memorial narratives in divided societies, considered to be part of cultural heritage, and to the reports relating to a) history textbooks (A/68/296) and b) memorials and museums (A/HRC/25/49). In both reports, the Special Rapporteur stressed the importance of putting in place conditions to ensure a multi-perspective approach to history teaching and memorialization processes. History teaching and memorialization practices should foster critical thinking, analytical learning and open spaces for debate. To ensure sufficient space for diverse narratives and perspectives to be expressed, she recommended that states

and other stakeholders should support victims and families of victims of mass or grave human rights violations, or traumatic events, seeking to commemorate the past, and should not engage in or support policies of denial that prevent the construction of memorials or memorialization processes; nor should they construct, support, or fund works that may incite violence. (A/HRC/25/49, §103 and 105.)

We would like to recall the Updated set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity. Principle 2 establishes the inalienable right of all persons to know the truth about past events concerning the perpetration of heinous crimes and about the circumstances and reasons that led to them. Full and effective exercise of the right to the truth provides a vital safeguard against the recurrence of violations.

In addition, principle 3 establishes the duty of States to preserve memory about those violations, ensure the transmission of such history, and facilitate knowledge of those violations (principle 3). It underscores that "people's knowledge of the history of its oppression is part of its heritage and, as such, must be ensured by appropriate measures in fulfilment of the State's duty to preserve archives and other evidence concerning violations of human rights [...] and to facilitate knowledge of those violations". Such measures shall aim at "preserving the collective memory from extinction and, in particular, at guarding against the development of revisionist and negationist arguments". Interpretation of past events that have the effect of denying or misrepresenting violations are incompatible with the aforementioned obligations of the States.

We would further like to refer to Human Rights Council Resolution 33/19 on human rights and transitional justice that recognizes that justice processes, memorialization processes, and the preservation of archives and other reliable evidence concerning gross violations of human rights and serious violations of international humanitarian law [...] ensure that such crimes are never forgotten and contribute to the prevention of their recurrence.

In addition, the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law adopted by General Assembly resolution 60/147 recalled that memorialization processes are also part of the right to reparation. Principle 22 specifies that satisfaction should include, *inter alia*,: verification of the facts and full and public disclosure of the truth; an official statement or a judicial decision restoring the dignity, reputation and rights of the victim and of persons closely connected with the victim; a public apology, including acknowledgement of the facts and acceptance of responsibility; commemorations and tributes to the victims; and the inclusion in training and educational material of accurate information on the violations that occurred.

We would also like to refer your Government to Article 14 of the ICCPR, which enshrines that everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal in the determination of their rights and obligations in a suit at law.

Lastly, we would like to refer 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 Recognised Human Rights and

Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to Articles 1 and 2 of the Declaration, which state that everyone has the right, individually and in association with others, to promote and to strive for the protection and realisation 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.

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

- Article 5 (b), which provides for the right to form, join and participate in non-governmental organisations, associations or groups;
- Article 13, which stipulates that everyone has the right, individually and in association with others, to solicit, receive and utilise resources for the express purpose of peacefully promoting and protecting human rights and fundamental freedoms;
- Article 6 (a), which provides for the right to know, seek, obtain, receive, and hold information about all human rights and fundamental freedoms;
- Article 6 (b) and (c), which provides for the right to freely publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and to draw public attention to those matters; and
- Article 12 (2) and (3), which provides that the State shall take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, *de facto* or *de jure* adverse discrimination, pressure, or any other arbitrary action as a consequence of their legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities, and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, and acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.