

Mandates of the Special Rapporteur on the situation of human rights defenders; 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 promotion and protection of human rights and fundamental freedoms while countering terrorism

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(Please use this reference in your reply)

11 February 2022

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; 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 promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Human Rights Council resolutions 43/16, 43/4, 41/12 and 40/16.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **alleged designation of the human rights project OVD-Info as a "foreign agent public association", as well as the blocking of its website and the impending blocking of its social media pages based on a court decision allegedly adopted following violations of the right to a fair trial.**

OVD-Info is a Russian human rights media project which monitors, researches, and publicises violations of the right to freedom of assembly and other civil and political rights in Russia and offers legal assistance to victims.

Mr. Grigory Okhotin is a human rights defender and a co-founder and director of OVD-Info.

We previously wrote to your Excellency's Government regarding the adoption and application of the Federal Law No. 121-FZ dated 20 July 2012 with subsequent amendments ("Foreign Agent NGOs Law") 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), 13 August 2021 (RUS 9/2021), and 24 November 2021 (RUS 13/2021). 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, 12 October 2021, and 19 January 2022. We also wrote to your Excellency's Government on 5 February 2018 (OL RUS 2/2018) regarding the adoption and subsequent amendments to the Federal Law No. 327-FZ dated 25 November 2017 ("Foreign Agent Media Law") and thank your Excellency's Government for the reply dated 6 April 2018. However, we remain concerned given the allegations below.

According to the information received:

OVD-Info's foreign agent designation

The Federal Law No. 481-FZ dated 30 December 2020 ("Foreign Agent Public Associations Law") authorised the Ministry of Justice to designate as "foreign agents" Russian associations receiving foreign funding and participating in political activity without being registered as legal entities.

On 29 September 2021, the Ministry of Justice designated OVD-Info as a "foreign agent public association". The element of foreign funding was reportedly not proved in the designation process. The "political activity" element reportedly consisted of publishing online the following: information on alleged human rights violations, reports to the Council of Europe on freedom of expression and assembly in Russia, guidelines on human rights defence and appeal templates, and information on legal assistance provided by OVD-Info in Russian courts and the European Court of Human Rights. On 11 November 2021, the Zamoskvoretsky District Court of Moscow dismissed OVD-Info's appeal of the designation. On 18 December 2021, OVD-Info filed a further appeal with the Moscow City Court. The hearing is scheduled for 17 March 2022.

Blocking of website and social media pages

OVD-Info's website and social media pages contain information about the alleged human rights violations, online tools allowing people to understand their rights, information on receiving human rights assistance and human rights petitions. Cumulatively, they have over 100 million annual views and are the source of information for over 75,000 media publications annually.

On 15 December 2021, the Lukhovitskiy Town Prosecutor filed an administrative lawsuit with the Lukhovitskiy District Court of the Moscow Region, requesting to recognise the information on OVD-Info's website and social media pages as "prohibited for dissemination in Russia". On 20 December 2021, the Lukhovitskiy District Court granted the prosecutor's request.

According to the court decision, publicly available on their website with extensive redactions, the court considered the following examples of publications:

- an interview with a Hizb ut-Tahrir (banned as a terrorist organisation in Russia) member about torture;
- an article about the persecution of Jehovah's Witnesses (banned as an extremist organisation in Russia);
- an article about the alleged freedom of assembly violations at an unauthorised protest;
- an article about the alleged political persecution of persons described in the court decision as "Ukrainian terrorists or persons who have

prepared and/or committed acts of sabotage and terrorism on the territory of the Russian Federation in the interests of Ukraine”; and

- an article on law enforcement practice on the public justification of terrorism.

While the court did not recognise any of the above as prohibited information, it held that OVD-Info’s entire website and social media pages (the list of which is redacted from the decision) contained “information aimed at justifying the activities of extremist and terrorist associations, materials justifying the actions of participants in such organisations, as well as information that forms motivation and readiness in the internet users to participate in public events held in violation of the established order.”

OVD-Info’s contact details were publicly available on its website and social media pages. However, according to the court decision, the defendants were “not identified”. As a result, OVD-Info was not informed of the trial nor invited to participate, unlike the Federal Service for Supervision of Communications, Information Technology and Mass Media (Roskomnadzor), a government body responsible for the blocking of websites.

Moreover, OVD-Info was reportedly not served a copy of the decision and learned about it on 25 December 2021, when its website was blocked by Roskomnadzor. OVD-Info’s website remains blocked in Russia. Roskomnadzor reportedly also ordered social media companies to block OVD-Info’s pages.

On 30 December 2021, Mr. Grigory Okhotin appealed the court decision as the domain owner and filed a motion to receive a copy of the court decision and the case materials. However, the court will reportedly not accept the appeal, and the court decision has not been provided to him or to OVD-Info.

We express serious concern at the designation of a human rights project OVD-Info as a “foreign agent public association”, which appears to be in retaliation of their exercise of the freedom of expression and of association, as well as of legitimate human rights work. We are also concerned about the negative impact that the designation of a human rights organisation may have on the civic space in Russia, and the right of civil society actors to freely and peacefully conduct their human rights activities.

We also express serious concerns about the terrorism-related crimes allegedly attributed to the human rights project OVD-Info by the administrative authority. We recall your Excellency’s Government that consistent with the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, the threshold for these inchoate crimes requires the reasonable probability that the expression in question would succeed in inciting a terrorist act, thus establishing a degree of causal link or actual risk of the proscribed result occurrence (A/HRC/22/17/Add.4; A/HRC/16/51). Such offences must be strictly circumscribed in both their wording, to comply with the principle of legal certainty, and their application, to comply with the principles of proportionality and necessity, so as to not unduly restrict the rights to freedom of expression and religion (A/HRC/40/52).

We are also concerned that the so-called OVD-Info company was not informed of the proceedings against it and could not take part in the trial. In this regard, we wish to remind your Excellency's Government that in a previous communication (OL DZA 12/2021) we have recognised that the right of individuals and entities to an effective remedy is severely limited by the absence of individual notification.

We are also concerned about the blocking of its website and impending blocking of its social media pages, and the fact that the blockings are based on a court decision allegedly adopted without due respect of the right to a fair trial. Furthermore, as most of OVD-Info's human rights work is reportedly carried out online, we are concerned that website and social media blockings may be aimed at a shutdown of its work. We recall your Excellency's Government that electronic modes of expression are a critical means for civil society to exercise their freedom of opinion and expression. Restricting such platforms – blocking, filtering or removing content – can affect civil society and human rights defenders and others disproportionately. Enjoyment of the rights to privacy and to freedom of expression are closely interrelated. Undue interference with the right to privacy limits the free development and exchange of ideas, and can have a chilling effect on freedom of expression (A/HRC/40/52).

We also reiterate our concern about the consistently negative effects of the implementation of the foreign agent laws, their further expansion, and the chilling effect it will have on human rights defenders and other members of civil society in Russia.

In connection with these serious concerns, we would like to refer your Excellency's Government to relevant international human rights instruments and standards, cited in the **Annex on Reference to international human rights law** attached to this letter.

As it is our responsibility, under the mandate 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 allegations mentioned above.
2. Please provide information on the legal basis for blocking OVD-Info's website and social media pages and explain how this is compatible with your Excellency's Government's international human rights obligations.
3. Please explain the grounds on which OVD-Info was designated as a "foreign agent public association", particularly which of its activities were considered political and the evidence of its foreign funding.
4. Please provide information on how the Foreign Agent Public Associations Law is compatible with your Excellency's Government's international human rights obligations.

5. Please indicate what measures have been taken to ensure that human rights defenders and members of civil society can exercise their right to freedom of expression and of association, as well as carry out their legitimate work freely and in a safe and enabling environment without acts of intimidation and harassment of any sort.

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). 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.

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

Mary Lawlor

Special Rapporteur on the situation of human rights defenders

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

Fionnuala Ní Aoláin

Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

Annex

Reference to international human rights law

In connection with the above-alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the following human rights standards.

We would like to refer 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.

We would like to remind your Excellency's Government 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/GC/27), restrictive measures must "be appropriate to achieve their protective function" and "be the least intrusive instrument amongst those which might achieve the desired result" (Paragraph 14), while "the principle of proportionality has to be respected not only in the law that frames the restrictions but also by the administrative and judicial authorities in applying the law" (Paragraph 15).

The right to freedom of expression includes the right to seek, receive and impart information and ideas of all kinds. As interpreted by the Human Rights Committee in General Comment No. 34 (CCPR/C/GC/34), such information and ideas include, inter alia, political discourse, commentary on one's own and on public affairs, discussion of human rights, and journalism (Paragraph 11), and all forms of expression and means of their dissemination are protected, including electronic and internet-based modes of expression (Paragraph 12). It has further found that restrictions of the right to freedom of opinion and expression that a government seeks to justify on grounds of national security and counter-terrorism should adhere to the principle of proportionality and necessity, be designed and implemented in a way that respects the universality of human rights and the principle of non-discrimination, and should never be used to prosecute human rights defenders.

The Human Rights Committee emphasised that when a State party imposes restrictions on the exercise of freedom of expression, these "must not be overbroad" (Paragraph 34), "may not put in jeopardy the right itself" (Paragraph 21) and may never be invoked to justify the muzzling of any advocacy of human rights (Paragraph 23). The Committee specifically stated that any restrictions on the operation of websites or any other internet-based, electronic or other such information dissemination system, including systems to support such communication, are only permissible to the extent that they are compatible with Article 19 (3) of the ICCPR, restrictions generally should be content-specific, and generic bans on the operation of certain sites and systems are not compatible with Article 19 (3) (Paragraph 43). It is also inconsistent with Article 19 (3) to prohibit a site or an information dissemination system from publishing material solely on the basis that it may be critical of the government or the political social system espoused by the government (Ibid.).

We wish to reiterate the principle enunciated in Human Rights Council Resolution 12/16 (A/HRC/RES/12/16). The Resolution calls on States to refrain from

imposing restrictions that are not consistent with Article 19 (3), inter alia, on discussion of government policies, reporting on human rights, expression of opinion and dissent, free flow of information and ideas, including practices such as the banning or closing of publications or other media and the abuse of administrative measures and censorship, and access to or use of information and communication technologies, including the Internet (Paragraph 5 (p)).

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.

We respectfully remind your Excellency's Government of the relevant provisions of the United Nations Security Council resolutions 1373 (2001), 1456(2003), 1566 (2004), 1624 (2005), 2178 (2014), 2242 (2015), 2341 (2017), 2354 (2017), 2368 (2017), 2370 (2017), 2395 (2017) and 2396 (2017); as well as Human Rights Council resolution 35/34 and General Assembly resolutions 49/60, 51/210, 72/123, 72/180 and 73/174. All these resolutions require that States must ensure that any measures taken to combat terrorism and violent extremism, including incitement of and support for terrorist acts, comply with all of their obligations under international law, in particular international human rights law, refugee law, and humanitarian law contained therein. We would like to bring to the attention of your Excellency's Government the report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism A/70/371 on the impact of counterterrorism measures on civil society, in particular , paragraph 46(c) that urges States to ensure that their counter-terrorism legislation is sufficiently precise to comply with the principle of legality, so as to prevent the possibility that it may be used to target civil society on political or other unjustified grounds.

Furthermore, 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, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems.
- 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.
- 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.

We would like to recall the report of the Special Rapporteur on the situation of human rights defenders, in which the Special Rapporteur noted that the right to access funding is among the key rights articulated in the UN Declaration on Human Rights Defenders (A/73/215, Paragraph 18). It is instrumental to the defence of human rights, and its implementation is a prerequisite for the creation of a safe and enabling environment for human rights defenders in which they can carry out their work (Paragraph 19). The Special Rapporteur also noted that this right protects the ability of defenders to raise funds internationally and underscores that even legitimate aims of the State cannot be used as pretexts to silence or reduce the activities of human rights defenders. The Russian Federation's discriminatory approach to "transparency" in respect of the disclosure of civil society funding was named as an example of bad practices in the report (Paragraph 22).

Furthermore, we would like to recall the report by the Special Rapporteur on the rights to freedom of peaceful assembly and of association, in which he expressed serious concern that undue barriers to funding are put in place and expressed his belief that States have an obligation to facilitate, not restrict, access for associations to funding, including from foreign sources (A/HRC/23/39, Paragraph 79). He called upon States to 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 authorisation or other undue impediments, including from individuals; associations, foundations or other civil society organisations; foreign Governments and aid agencies; the private sector; the United Nations and other entities (Paragraph 82 (b)). He also called upon States to recognise that undue restrictions to funding are a violation of the right to freedom of

association (Paragraph 82 (c)) and 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 (Paragraph 82 (d)), and to adopt measures to protect individuals and associations against defamation, disparagement, undue audits and other attacks in relation to the funding they allegedly received (Paragraph 82 (e)).

We would also like to refer to Human Rights Council resolution 24/5 in which the Council “reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions of the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law”.

Finally, we would like to remind your Excellency’s Government of the Human Rights Committee’s Concluding observations on the seventh periodic report of the Russian Federation (CCPR/C/RUS/CO/7). The Committee concluded that the Russian Federation should repeal or revise the legislation requiring non-commercial organisations that receive foreign funding to register as “foreign agents” with a view to bringing it into line with its obligations under the ICCPR, and take into account the opinion of the European Commission for Democracy through Law in that regard. It should, at the very least: (a) drop the term “foreign agent” from the law; (b) clarify the broad definition of “political activities”; (c) remove the power granted under the law of registering non-commercial organisations without their consent; and (d) revisit the procedural requirements and sanctions applicable under the law to ensure their necessity and proportionality (Paragraph 22).