

Mandates of 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

Ref.: OL RUS 16/2022
(Please use this reference in your reply)

30 November 2022

Excellency,

We have the honour to address you in our capacities as 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 resolutions 50/17 and 43/16.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **Federal Law No. 121-FZ dated 20 July 2012 ("Foreign Agents Law") with subsequent amendments**. The measures adopted in the Foreign Agents Law do not appear to conform with your Excellency's Government's international legal human rights obligations, in particular with regard to the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR). Specifically, the law and its amendments would infringe on a number of fundamental human rights and would not meet the required thresholds of necessity, proportionality and non-discrimination under international law.

The UN Special Procedures have repeatedly raised similar concerns of serious human rights restrictions with regards to the adoption and application of the Foreign Agents Law and its subsequent amendments. These concerns were the subject of communications sent by Special Procedures, dated 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), 24 November 2021 (RUS 13/2021), 11 February 2022 (RUS 2/2022) and 12 May 2022 (RUS 7/2022). We acknowledge and thank your Excellency's Government for its replies 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, 19 January 2022, 11 April 2022 and 4 July 2022.

We respectfully underline your Excellency's Government's obligations to maintain and uphold the fundamental guarantees of international and human rights law as your Excellency's Government moves to finalize new amendments of the Foreign Agents Law. Consequently, we urge your Excellency's Government to repeal or substantially review this law to bring it in line with the Russian Federation's obligations under international human rights law as well as with other international standards.

In this regard, we would like to respectfully 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).

Adoption of the Foreign Agents Law and its amendments

In 2012, the Foreign Agents Law (Law No. 121-FZ of 13 July 2012) was adopted. It has since expanded its scope to include non-profit organisations, media outlets and individual Russian citizens including journalists, activists and human rights defenders.

On 29 June 2022, Members of the State Duma adopted new amendments “on control over the activities of persons being under foreign influence”, which were subsequently signed into law by the Russian President on 14 July 2022, and will enter into force on 1 December 2022. The amendments are reportedly aimed at systemizing various regulations and making more transparent the various processes for monitoring the activities of individuals and organizations allegedly “under foreign influence”.

Human rights concerns regarding the Foreign Agents Law and its amendments

Label of “foreign agent”

Following a press release issued by Special Procedures on 13 July 2022¹, we would like to bring your Excellency’s Government’s attention to the adoption of new amendments to the “Foreign Agent Law”, under which anyone deemed to be under foreign influence, or receiving any kind of support from abroad, can be declared a ‘foreign agent’. The term “foreign influence” in the law is reportedly being used in reference to receiving foreign support or being influenced by foreigners in other ways, including through coercion, persuasion and other means. The term “support” is understood as the provision of funds and/or other property from a foreign source, as well as the provision of organisational, methodological, scientific, technical or other assistance from a foreign source.

Labelling journalists, activists, human rights defenders and associations as “foreign agents” under vague and overbroad concepts such as “foreign influence” under a new provision in article 2, could further obstruct and stigmatize the legitimate work of human rights defenders, activists and civil society organizations, with a serious damaging effect on the right to freedom of association in the Russian Federation.

We recall that the sweeping imposition of the label of “foreign agent” on civil society activists and organizations simply because they receive foreign funding cannot

¹ <https://www.ohchr.org/en/press-releases/2022/07/russia-un-experts-condemn-civil-society-shutdown>

be deemed necessary in a democratic society in order to ensure a legitimate aim, including the aim of ensuring transparency of the civil society sector (A/HRC/50/23, para. 28). The European Court on Human Rights in its recent judgement concerning the application of the Foreign Agents Law to non-governmental organisations and their directors, also stated that such labelling is neither prescribed by law nor necessary in a democratic society, and that the “Government had not been able to adduce “relevant and sufficient” reasons for creating that new category or show that those measures had furthered the declared goal of increasing transparency.”²

We have also repeatedly expressed concern³ about the use of the “Law on Foreign Agents” in reported smear campaigns against civil society organizations and human rights defenders, which in turn expose them to risks of harassment and violence. As expressed in a press release issued by Special Procedures⁴, “(i)n Russia the term ‘foreign agent’ is widely understood to mean ‘traitor’ or ‘spy’, so this label can be very damaging” to the affected persons’ reputation, credibility and even threatening to their safety. Such stigmatizing legal measures could result in a chilling effect on civil society’s ability to exercise their right to freedom of association and diminish their ability to raise the funds essential to their existence and work.

The broad scope of the label of “foreign agent” could suggest that certain activists or associations are under foreign control, disregarding and undermining the efforts for the promotion and protection of human rights, the rule of law, and human development for the benefit of Russian society and democratic institutions. We have at a number of occasions expressed concerns⁵ to your Excellency’s Government over the particularly acute chilling effect of the designation of “foreign agent” of human rights defenders, activists and civil society organizations, including those protecting and promoting the rights of LGBTI+ persons.

We note that the new provision under article 1 of the law goes even further by making it possible to label as ‘foreign agent’ any individual irrespective of nationality, any entity irrespective of its legal form and country of incorporation, and any informal initiative irrespective of location or type of activity. This overly broad definition renders it possible to label virtually any type of engagement with a foreign individual or organisation for whatever purpose as “foreign influence”. The overly broad term of “political activities” in article 4 of the Foreign Agents Law, without specifying what acts would constitute or not such activity, allows for extensive interpretation and put civil society at risk of politically motivated restrictions and repression. It may lead to further stigmatization or criminalisation of certain activists and associations and have an adverse effect on the already shrinking civic space and democracy in the country (A/HRC/50/23, para. 32).

We recall that restrictions or prohibitions of access to foreign funding on the basis of the political nature of the activities of an organization cannot be based on vague

² European Court of Human Rights, ECODEFENCE AND OTHERS v. RUSSIA, Judgment 14.6.2022

³ RUS 7/2022 ; RUS 2/2022 ; RUS 5/2019 ; RUS 8/2016 ; RUS 4/2016 ; RUS 2/2016 ; RUS 4/2015 ; RUS 9/2014 ; RUS 7/2014 ; RUS 13/2013.

⁴ <https://www.ohchr.org/en/press-releases/2021/08/russia-free-semyon-simonov-and-stop-criminalising-human-rights-defenders>

⁵ RUS 7/2022 ; RUS 2/2022 ; RUS 5/2019 ; RUS 8/2016 ; RUS 4/2016 ; RUS 2/2016 ; RUS 4/2015 ; RUS 9/2014 ; RUS 7/2014 ; RUS 13/2013.

and overly broad terms, which do not comply with the principle of legality (A/HRC/50/23, para. 32).

Registration and Reporting Requirements

The “Foreign Agents Law” requires the registration of all “foreign agents” (article 5), including individuals affiliated with “foreign agents”, falling under the definition stated in article 6. Such a broad and mandatory registration requirement would fail to meet the principles of proportionality and necessity. We respectfully bring your Excellency’s Government’s attention to our and the Human Rights Committee’s repeated findings that undue and strict registration requirements for NGOs may disproportionately obstruct their legitimate activities (A/61/267, para. 23). As the Human Rights Council has urged, States implementing NGO registration procedures must ensure that they are “transparent, accessible, non-discriminatory, expeditious and inexpensive, allow for the possibility to appeal and avoid requiring re-registration, in accordance with national legislation, and are in conformity with international human rights law” (HRC Resolution 22/6, para. 8). Further, as raised by the Special Rapporteur on the rights to freedom of peaceful assembly and of association, “the right to freedom of association equally protects associations that are not registered.” He further warned that “[m]andatory registration, particularly where authorities have broad discretion to grant or deny registration, provides an opportunity for the State to refuse or delay registration to groups that do not espouse ‘favourable’ views” (A/HRC/20/27, para. 96, A/HRC/26/29, para. 54). We underline that States have an obligation to treat all associations equitably irrespective of their status of registration or critical views, and this treatment must be guided by objective criteria in compliance with the State’s international human rights obligations.

The Foreign Agents Law also stipulates that all “foreign agents” will be required to prepare annual financial reports detailing their income and expenses (article 9.6); to keep a separate statement of income or expenses obtained from foreign sources (article 9.7); and disclose any information about foreign sources, the amount of funds and the scope of other property received from these sources (article 9.8.3). The incorporation of these amendments into domestic law could result in overly onerous and complex reporting and disclosure requirements on the part of civil society and NGOs.

Such burdensome reporting requirements may contravene the legal requirements of proportionality and necessity, may deplete already-limited budgets, detract civil society labelled as “foreign agents” from the ability to carry out their legitimate activities, and deter individuals from joining or leading associations altogether. This constitutes an apparent violation of the rights to freedom of opinion, expression and association as guaranteed by the ICCPR. The Special Rapporteur on the rights to freedom of peaceful assembly and of association has previously stressed that burdensome reporting requirements, disclosure and registration obligations imposed on associations simply because an association receives foreign funding cannot be deemed necessary in a democratic society (A/HRC/50/23, para. 28). Further, he has highlighted that these requirements may amount to a severe restriction to freedom of association (A/HRC/50/23, para. 23).

We remind your Excellency's Government that "members of associations should be free to determine their statutes, structure and activities and make decisions without State interference" (A/HRC/20/27, para. 64), so that they can effectively exercise their rights to freedom of association, opinion and expression. The right to freedom of association relates not only to the right to form an association, but also guarantees the right of such an association to freely carry out its legitimate activities, including the freedom "to solicit and receive voluntary financial and other contributions" (A/HRC/RES/22/6). This ability to solicit and receive financial contributions is vital to an association's operations. We thus emphasize that any reporting requirements, such as those incorporated in the amendments pertaining to the documentation of expenditures and "procedures concerning the receipt of foreign funds", should respect and not inhibit associations' functional autonomy and operation. Funding restrictions, particularly on foreign funding, may discriminately and disproportionately target certain associations, especially those with critical or diverse views. Undue limitations on foreign funding may disproportionately impact human rights activists and organizations in particular (A/HRC/40/52, para. 42).

Further, certain disclosure requirements (article 5.4 and article 9.8.12) may impinge on the right to privacy, as well the right to freedom of association. Public disclosure requirements may include confidential and human rights sensitive information, unduly impinging on fundamental privacy rights, in violation of applicable privacy laws, and may expose individuals to serious risks of reprisals. The Special Rapporteur on the rights to freedom of peaceful assembly and of association reiterated that requiring civil society organizations to publicly disclose financial information constitutes a severe restriction to freedom of association. He further pointed out that "such a requirement has been recognized as justified in connection with associations receiving public funds, but only with regard to such funds specifically, rather than to their finances as a whole"; and stressed that "[a]ll reporting requirements should be crafted in a way that protects the rights of the donors, beneficiaries and staff of associations" (A/HRC/50/23).

The protection of individual information is often vital to supporting an enabling environment for civil society. We have previously expressed our views over reports of discriminatory approaches to "transparency" in respect of the disclosure of civil society funding in the Russian Federation (A/73/215, para. 22). We also note the importance of limiting the use of any personal data for specific enumerated purposes and instituting safeguards of data privacy to protect against the unauthorized retrieval and use of such data.

We therefore respectfully urge your Excellency's Government to ensure that any procedures governing NGO registration and reporting under the Foreign Agents Law are transparent, accessible, non-discriminatory, expeditious, inexpensive and allow for possibility of appeal and remedy. In regard to the latter, the Special Rapporteur on the rights to freedom of peaceful assembly and of association noted that "[a]ssociations whose submissions or applications have been rejected should have the opportunity to challenge the decision before an independent and impartial court" (A/HRC/20/27, para. 61).

Monitoring Powers and Lack of Independent Oversight Body

The new provisions also provide for your Excellency's Government's control over the activities of those labelled as "foreign agents" (article 10). Broad and absolute governmental oversight powers could be misused to target NGOs carrying out their legitimate and permissible activities and exercising their fundamental rights and freedoms under the ICCPR. For instance, the unchecked ministerial discretion to dictate the criteria, methods and conditions for NGO registration (articles 5 and 6) may give rise to the discriminatory and disproportionate targeting of NGOs and human rights defenders, particularly those with critical or dissenting views from the Government or working on what are perceived to be politically sensitive issues. The expansive rules providing for your Excellency's Government's monitoring of NGO expenditure, through scheduled and unscheduled audits could also result in abuses.

In this regard, 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" 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).

Furthermore, we underscore the importance of having clear, comprehensive and human rights- and rule of law-informed guidance regarding the implementation of any such monitoring and surveillance powers. We recall the Human Rights Committee's determination that the right to privacy requires robust, independent oversight systems to supervise the implementation of these measures, including through the involvement of the judiciary and the availability of effective remedies in cases of abuse (CCPR/C/IT/CO/6, para. 36).

We further remind your Excellency's Government that the right to assemble peacefully and associate freely extends to "persons espousing minority or dissenting views or belief, human rights defenders [...] and others, including migrants, seeking to exercise or promote those rights" (A/HRC/26/29, para. 22; A/HRC/RES/24/5). Therefore, any targeting of activists or associations for expressing critical or dissenting views constitute a severe violation of the rights to freedom of assembly and of association.

Restrictions on access to funding

This legislation may impinge impermissibly on the right of civil society organizations to access the funding necessary to carry out their work, protected by the right to freedom of association. For instance, a new provision stipulated by article 11.12 rules out any possibility for civil society organisations labelled as "foreign agents" to receive support from the State, imposing a total ban on domestic public funding. As the Special Rapporteur on the rights to freedom of peaceful assembly and of association has noted, States have an obligation to facilitate and not to restrict, the access for associations to funding, including from foreign sources (A/HRC/50/23, para. 64 (a)).

Although we recognize that restrictions on foreign donations may be justified in some circumstances, such as for example to prevent undue foreign influence on political parties or to protect the integrity of the electoral process, such measures cannot be based on vague and overly broad terms, which do not comply with the principle of legality, nor with the requirements of necessity and proportionality.

Moreover, such restrictions on foreign funding tend to have a disproportionate impact on civil society organizations, especially those advancing human rights, democracy, accountability and the rights of marginalized groups, which are often highly dependent on foreign funds to support their activities.

In this regard, we would like to refer to article 13 of 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, which states the right of everyone, 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; and to article 6 (f) of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, which states that the right to freedom of thought, conscience, religion or belief shall include the freedom to solicit and receive voluntary financial and other contributions from individuals and institutions.

In a 2022 report to the Human Rights Council, the Special Rapporteur on the right to freedom of peaceful assembly and of association expressed concerns over the Foreign Agents Law for silencing, intimidating or excluding civil society organizations that promote human rights by limiting their access to funding (A/HRC/50/23, para. 47). In the same report, the Special Rapporteur called upon States to ensure that all associations – registered and unregistered – can fully enjoy their right to 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 (para. 64 (a)); and reaffirmed each State’s responsibility and duty to repeal laws and regulatory measures imposing restrictions contrary to international human rights standards (para. 64 (d)).

We would like to further refer to the report of the Special Rapporteur on the situation of human rights defenders (A/73/215), in which he noted that the right to access funding is among the key rights articulated in the UN Declaration on Human Rights Defenders (para. 18); and that it is instrumental to the defence of human rights and a prerequisite for the creation of a safe and enabling environment for human rights defenders in which they can carry out their work (para. 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.

Criminalization and Penalties

The imposition of liability, including criminal liability, for those violating the Foreign Agents Law, as stipulated in article 12 should also be reviewed. We observe that a new provision (article 10.9.5) under the amendments establishes a one-month

timeline for the authorities “to eliminate the identified non-compliances”. Further, violation of these requirements could result in criminal sanctions, as well as administrative sanctions, or heavy penalties. We respectfully remind your Excellency’s Government that sanction for failure to comply with reporting requirements or other administrative controls should always be guided by the principles of proportionality and necessity.

We further recall that criminal penalties are often misused by authorities as a tool to repress and silence civil society actors and human rights defenders and may disproportionately impinge on the rights to freedom of opinion and expression, and the rights to freedom of peaceful assembly and of association (A/HRC/26/29, para. 60). Criminal penalties may deter individuals from taking part in the legitimate activities such as monitoring, documenting and reporting on human rights violations. We have previously expressed our concerns over the abuse of this law to criminally prosecute civil society actors, particularly human rights defenders and protest organizers (RUS 4/2015, RUS 2/2016, RUS 4/2016, RUS 3/2017 and RUS 13/2021), for receiving and using foreign funding to support their pro-democracy activities.

In addition, we would like to stress that the disproportionate and unnecessary criminalization and stigmatisation of NGOs and activists affect not only their rights to freedom of expression and of association, but also violate their socioeconomic rights protected under the ICESCR such as the rights to work and adequate housing.

As such, we reiterate the legal obligation of your Excellency’s Government to ensure that any penalties incorporated in the Foreign Agents Law are absolutely necessary and strictly proportional to a legitimate aim, in line with the international standards. We underscore that any individuals involved in unregistered associations should never be subject to criminal sanctions for failure to register, as this will constitute a violation of the right to freedom of association. In this respect, we urge your Excellency’s Government to ensure the availability and unobstructed access to independent oversight mechanisms and judicial review to minimize arbitrariness and abuse in the implementation of any penalties.

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

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned assessment of the legislation.
2. Please explain how the Foreign Agents Law and the amendments are compatible with your Excellency’s Government’s obligations under international human rights law and standards detailed above, such as under articles 2, 17 and 22 of the ICCPR and article 20 of the UDHR; and how your Excellency’s Government would remediate the aforementioned inconsistencies with international human rights standards enshrined in the Foreign Agents Law.
3. Please explain how the definitions of “foreign agents” and “foreign influence” are compatible with the principle of legal certainty

established under the ICCPR; and please explain how the measures undertaken under the Foreign Agent Law meet the requirements of necessary in democratic society and proportionality under international human rights law

4. Please provide any information on the remaining stages of the legislative process with regard to the Foreign Agent Law, including your Government's plan for consultation with civil society and concerned individuals and groups.
5. Please indicate what measures are available to prevent, remedy and redress any human rights violations that could result from the implementation of the "Foreign Agents Law"; -including measures to redress possible violations of the right to freedom of association, and for any financial and reputational harm, as well as possible violations of data privacy rights.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting website within 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

We hope these comments and analysis will contribute to the ongoing review process of the Foreign Agents Law and we remain at your disposal to provide any technical assistance to the authorities upon request.

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

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