



Universal Periodic Review of Russia

30th session of the United Nations Human Rights Council
Working Group on the Universal Periodic Review

Submitting NGOs

- OVD-Info
- Youth Human Rights Movement

Contact person on behalf of the NGOs:

Matthew Jones, International Advocacy Officer
Human Rights House Foundation
matthew.jones@humanrightshouse.org
+41 797417321

Background of submitting NGOs

This report is a joint contribution to the 30th session of the Universal Periodic Review (UPR) for Russia, prepared by Russian NGOs with the support of the Human Rights House Foundation (HRHF). The submitting NGOs, OVD-Info¹, and Youth Human Rights Movement², have been monitoring the human rights situation in Russia over many years and provide first-hand and reliable information. The focus of this submission is on freedom of peaceful assembly and of association as these rights pertain to the Russian Federation, particularly since Russia's last Universal Periodic Review, and in light of the recommendations that Russia was given during its second review and with respect to its general human rights obligations.

Freedom of association

1. Restrictive amendments to Russian NGO legislation were introduced in July 2012 requiring NGOs accepting foreign funding and engaging in “political activities” to register as “foreign agents” and to label their publications accordingly (popularly known as the “foreign agents” law). These amendments, together with their implementation, currently constitute the highest threat to the freedom of association in the country. The law defines “political activity” extremely broadly as “actions aimed at influencing government policies or shaping public opinion” which is a natural mode of operation for most NGOs.

¹ OVD-Info website: <https://ovdinfo.org/>

² Youth Human Rights Movement website : <https://www.yhrm.org>

2. Although the Russian Federation has declined all the specific recommendations to review or repeal the “foreign agents” legislation made at the 2nd cycle of UPR, it has supported several more general ones, including those to adequately address legislative and administrative measures which could negatively affect the legitimate activities of NGOs (140.173) and to ensure that the laws concerning NGOs do not impose undue obstacles for their functioning (140.170). Unfortunately, the Russian authorities seem not to take any steps with a view of implementing these recommendations.
3. Since March 2013, the prosecutor’s office and the Ministry of Justice have brought administrative charges for not registering as “foreign agents” voluntarily against at least 125 NGOs and 24 of their leaders personally, out of which 89 groups and 16 leaders were found guilty by the courts. The total sum of the fines due to be paid by these NGOs is more than 22,000,000 RUB (USD 380,000). Only in 10 known cases did the courts find no violations of the law by NGOs, while 33 cases were closed on formal grounds.
4. The decision passed by the Constitutional Court on 8 April 2014, which found these legal provisions compliant with the Russian Constitution, but at the same time gave some clarifications on the way they should be implemented, unfortunately, did not help much to change the situation to the better. Thus, despite the Court directly pointing out that actions or statements of the leader or members of an NGO made in their individual capacity may not be cited as examples of “political activities” carried out by the group, the enforcement agencies widely used such arguments in later cases. Also, despite the Constitutional Court’s position that the minimum level of fines for not complying with the “foreign agents” provisions should be removed from the law and that until then the courts should order penalties below this minimum in administrative cases against NGOs, only in 30 known cases did the courts rule to impose a lower fine.
5. In June 2014, the operating environment for NGOs was further restricted through introducing the procedure of forcible (involuntary) inclusion of NGOs in the register of “foreign agents” upon the decision of the Ministry of Justice. These amendments widened the list of grounds for conducting irregular (unscheduled) NGO inspections by the Ministry of Justice, by including into it the information that an NGO is acting as a “foreign agent” received by the Ministry from any state body, legal entity or a citizen.
6. As of 31 December 2016, there were 103 NGOs included in the register of “foreign agents” maintained by the Ministry of Justice, and 51 NGOs, which were previously recognized as such, but later managed to get excluded from the register (as a result of either dissolution or of ceasing to receive foreign funding). Since then, the Ministry included 8 more NGOs in the register and excluded 23 from it, so by 1 October 2017 the register includes 88 groups.
7. Among those included in the register are the most prominent, active and outspoken NGOs. Their activities, which were considered as “political”, often relate to promoting better observance of Russia’s international obligations in such fields as ensuring free and fair elections, combatting torture and discrimination, defending media freedom, fighting corruption, as well as protecting the environment. Many of the groups forcibly included in the register tried to challenge in courts the respective decisions by the Ministry of Justice, and at least 61 of them have already lost their cases. In no case did the court find such a decision unlawful.
8. NGOs included in the registry are obliged to label any published material, speech, presentation, event, or consultation as originating from a “foreign agent.” Aside from that, they are subject to

additional reporting and audits. Failing to follow these requirements may lead to suspension of the group's activities without a court decision, huge fines leading to bankruptcy, and, finally, criminal charges against its leaders that may result in up to two years in prison. At the time of writing, at least 29 NGOs have faced administrative charges for not labelling their materials (12 of these faced two cases each, 2 faced three cases each, 2 – four cases each, and 3 – even five cases), and at least 48 of these cases were lost by NGOs. The total amount of the fines for this is more than RUB 12,000,000 (USD 208,000). Also at least 28 groups faced charges for alleged failure to comply with the reporting requirements set for “foreign agents” (13 of them were fined).

9. Since the beginning of 2016, the Ministry of Justice has started applying to courts for forcible dissolution of NGOs, which had been included in the register of “foreign agents”, but failed to implement the related sanctions and comply with the requirements (paying fines, submitting additional reporting, etc.). At least 7 such applications have been filed, and 6 groups have already been liquidated as a result.
10. Finally, in May 2016 the first criminal case for “malicious evasion of duties imposed by the law on non-profit organisations performing the functions of a foreign agent” (Article 330.1 of the Criminal Code) was opened against Ms. Valentina Cherevatenko, leader of Women of the Don Union and Women of the Don Foundation for Civil Society Development, both of which are based in Novocherkassk (Rostov region) and work on gender equality, human rights and peacebuilding.
11. Ms. Cherevatenko was suspected of having criminal intent to violate the “foreign agents” law when she established the Women of the Don Foundation in August 2013 with goals identical to those of the Women of the Don Union. The latter earlier that year had been prohibited by the Prosecutor's Office from undertaking projects in regions other than Rostov where it was based. Since the Union primarily conducted its activities in the conflict areas located outside of the Rostov region, for instance in the North Caucasus, such a prohibition meant a de facto termination of its work. The creation of the Foundation allowed her to continue the Union's work without any territorial limitation.
12. In 2014 the Women of the Don Union was listed as a “foreign agent”. A year later the Foundation was assigned the same status by the Ministry of Justice and added to the register. Both organisations however refused to accept this label and challenged their listing in the register and related fines, in civil and administrative proceedings. In February 2016, the Ministry removed the Women of the Don Union from the register, as the organisation was no longer carrying out the “functions of a “foreign agent”, but the Foundation remains in the register at the time of writing.
13. In May 2016, Valentina Cherevatenko was called for interrogation as part of a preliminary inquiry under Article 330.1 of the Criminal Code, and in June 2016 the office of the Women of the Don Union and Foundation located in Novocherkassk was searched by the Federal Security Service and police officers. In early June 2017, the Investigative Committee brought official charges against Ms. Cherevatenko. If convicted, she would face up to two years of imprisonment. But on 24 July 2017, she received a letter from the General Prosecutor's office informing her that the criminal case against her was closed on 19 June 2017 for "*absence of the event of a crime*".

14. After losing their cases in domestic courts dozens of Russian NGOs applied to the European Court of Human Rights on alleged violations of their rights by the provisions of the “foreign agents” law. In March 2017, the applications of 61 groups were communicated to the Russian authorities.
15. Despite strong criticism of the law by nearly all the international human rights mechanisms, including the UN treaty bodies and special procedures, the Council of Europe Commissioner for Human Rights and the Venice Commission, the authorities took no steps to repeal or amend it to bring it in line with international standards.
16. Amendments adopted in February 2015, which introduced a procedure of removing NGOs from the register, was not a remedy. To be removed from the register, an NGO must undergo a special inspection by the Ministry of Justice, even if its inclusion onto the register had already been found illegal by a court decision. To meet the criteria for removal an NGO needs to demonstrate that it had either not received foreign funds or stopped engaging in “political activity” for a full year after their inclusion to the register. If the group had been removed from the register and later found to carry out “political activity” and receive foreign funding, it would lose the right to apply for removal from the register for three years.
17. At least 39 NGOs have applied for this procedure stating that they have not received foreign funding over the course of a year or more, 21 of them have received a positive decision and have been excluded from the register, while 18 were refused. The other 30 groups were removed from the register due to their dissolution.
18. In December 2015, the Ministry of Justice upon a request of the President of the Russian Federation prepared a proposal for a new definition of “political activities”, which was allegedly aimed at clarifying this notion and excluding its arbitrary application. The proposal, adopted by the State Duma in June 2016, in fact further expanded the definition in such a way that it would include almost every advocacy activity carried out by NGOs. According to the amended definition, if an organization carries out legal or policy analysis, monitors the work of government institutions, conducts public opinion surveys, engages in research, petitions government officials, etc. as long as those efforts are aimed at somehow influencing the government or public opinion, they constitute “political activity.” According to experts, the new definition simply codified already established implementation practice.
19. In general, the practice of implementing the provisions on “foreign agents” shows that these norms do not meet the criteria of predictability and principle of equality of all associations before the law, and they substantially weaken the guarantees of protecting NGOs from arbitrary interference of state authorities in their activities.
20. These provisions may be interpreted so broadly that it is impossible for an NGO to understand whether it is breaking them or not. This creates a fertile ground for selective and arbitrary application of the law based on political bias rather than legal grounds. Thus, there were a number of cases where one and the same activities of NGOs were found not to be “political” by one state agency (e.g., the Ministry of Justice), while another (e.g., the prosecutor’s office) considered them as “political”. In other cases, even the same agency could change its assessment of the same activities while repeatedly inspecting an NGO.
21. Statements by the Russian authorities that the “foreign agents” law only serves the purpose of ensuring transparency of foreign funding and is not discriminatory in its nature are not valid, as

the authorities introduce measures discriminating “foreign agent” NGOs in both law and practice.

22. Thus, in November 2014, amendments to the electoral legislation were adopted, which directly prohibited any involvement of “foreign agent” groups in the electoral process, including election monitoring. Amendments to the law on political parties, also signed into law in November 2014, introduced a prohibition for parties to receive donations from “foreign agent” NGOs, as well as to make any deals with them. Another law, which introduced a new status of “NGOs delivering public benefit services”, was adopted in July 2016. The law includes a provision that NGOs registered as “foreign agents” are not eligible to obtain this status, and thus will not be entitled to receive budget funds for delivering social services to citizens.
23. Other legislative proposals put forward by the Ministry of Justice include prohibition for any state and municipal officials “to participate in the establishment and activities of NGOs performing the functions of a foreign agent, including membership in their governing bodies, public boards and other bodies” and prohibition for these NGOs to nominate their representatives to Public Oversight Commissions, which are mandated to monitor penitentiary institutions. In August 2015, the Ministry of Communications also proposed amendments to the federal law “On Mass Media”, which include a prohibition for “foreign agent” NGOs to act as founders of media outlets. The most recent proposals concern the prohibition for representatives of “foreign agent” groups to carry out the official anti-corruption assessment of legislative acts and their exclusion from the registry of children’s and youth associations enjoying state support.
24. In June 2015, the Federal Law “On Amendments to Certain Legislative Acts of the Russian Federation,” which introduced a new concept of “*undesirable organization*” to the Russian legislation, came into effect. According to the law, the activity of foreign or international non-governmental organization may be recognized as “undesirable” if it poses a threat to the fundamentals of the constitutional system, the national defence, or the national security. The “undesirable organizations” are not allowed to have subdivisions, carry out programmes (projects), produce, store and distribute information materials, conduct mass actions and public events on the territory of the Russian Federation, as well as to use bank accounts and deposits, except for the settlement of obligations of the organization. The recognition of the organization as “undesirable” essentially means a total ban on its operation in Russia.
25. The decision on recognition of the organization as “undesirable” is made by the Prosecutor General or his/her deputy with the approval of the Ministry of Foreign Affairs. The register of “undesirable organizations” is maintained by the Ministry of Justice. The law does not require any motivation for making a decision and does not provide for a mandatory judicial review at the stages of decision making and including the organization in the register. The organization which was recognized as “undesirable” can only appeal this decision according to the standard procedure.
26. The law introduces administrative and criminal liability for the executives of the organizations whose activity is recognized as “undesirable,” and those who continue to cooperate with these organizations. Thus, the continuation of activity (in the form of management, as well as in the form of participation) by the organization that has been recognized as “undesirable” on the territory of the Russian Federation is punishable by a fine of up to RUB 15,000 (USD 260) for individuals, up to RUB 50,000 (USD 860) for officials, and up to RUB 100,000 (USD 1,730) for legal entities. In case of double jeopardy in one year period, the execution of activity or continuing participation in it are punishable with a maximum penalty of imprisonment for up to

six years. Finally, the law provides that a foreign citizen or a stateless person who is involved in the activities of “undesirable organizations” may be denied entry to the territory of Russia.

27. The vague wording of the law and lack of requirement of motivation for the decisions, as well as absence of judicial review at the stage of making decisions, pose serious threats of arbitrary use and can lead to the destruction of legitimate and transparent mechanisms for supporting NGOs’ activities.
28. As of 1 October 2017, the list includes 11 “undesirable” organizations, most of them US-based foundations working on democracy promotion and capacity-building for civil society, including some of the largest donors that had been supporting Russian rights groups for many years. Two major private US-based foundations also chose to shut down their operations in Russia preemptively.
29. At least two affected organizations, the US-Russia Foundation for Economic Advancement and Rule of Law, and “Open Russia”, attempted to appeal against the decision of the Prosecutor General’s Office. The first one was dismissed by a court in July 2016, while the latter is still pending.
30. By 1 October 2017, there are at least 10 known administrative cases for taking part in the activities of “undesirable” organizations brought against educational and scientific institutions, NGOs and their staff members, and four – against individual activists (all of them belonging to the “Open Russia” opposition movement), of which eight and one respectively have been found guilty by the courts.

Recommendations

31. **Repeal or review the provisions on “foreign agents” NGOs and related norms according to the recommendations made by the UN treaty bodies, the Venice Commission and the Council of Europe Commissioner for Human Rights to bring them in line with the state’s international obligations with respect to freedom of association;**
32. **Repeal the law on “undesirable organizations” and to ensure unimpeded access of Russian civil society to support by international donors;**
33. **Develop its legislation regulating freedom of association with a view to ensuring a favorable environment for the creation and functioning of NGOs and other civil society initiatives and groups.**

Peaceful assembly

34. Since 2013, Russia has continued to tighten the legislative framework on the right of freedom of assembly. In accordance to changes adopted to the Federal Law on Public Events in 2012, new restrictions on places and forms of gatherings were introduced by local legislation in many Russian regions.
35. In 2014, a new federal law criminalized repeated violations of the administrative rules of public rallies. According to Article 212.1 of the Criminal Code, citizens who are found guilty for breaking the assembly law more than three times within six months can be imprisoned up to five

years or fined up to RUB 1,000,000 (USD 17,400). Within a year, four opposition activists were accused of participation in peaceful demonstrations in Moscow. Two of them left the country. Another one, peaceful protester from Moscow Ildar Dadin, was sentenced in late 2015 to three years in prison for participation in three one-man pickets and one peaceful demonstration. The sentence was then reduced on appeal to two-and-a-half years. The verdict was cancelled by the Presidium of the Supreme Court in February 2017.

36. Responsibility for a second violation of the assembly law within the space of one year was included in 2014 in the Code of Administrative Offences; since then participants and organizers of public events face arrest and detention for up to 30 days and fines up to RUB 300,000 (USD 5,200).
37. At the same time, Russian local authorities continue arbitrary application of the legislation in relation to notification and agreement procedure. The current legal procedure for holding an event is based on a notification process. An organiser should inform local authorities about topic, time, place and estimated number of participants, and authorities can agree with suggestions or offer an equivalent substitution. However, in practice the authorities tend to reject applications for arbitrary reasons.
38. For example, in 2017 local authorities in different Russian cities rejected 60 of 81 requests to hold public events against corruption on 26 March without sufficient or legitimate grounds. This restrictive practice results in mass detentions of participants of public events. According to OVD-Info monitoring, during the whole of 2013 in Moscow and Saint-Petersburg around 2,000 people were detained, whereas over 1,500 detentions were recorded in the same cities in relation to the 26 March 2017 events alone. Due to both new legislation on freedom of assembly, and arbitrary usage of other articles of the Criminal Code, those detained face criminal prosecution and can be imprisoned. Seven of public rallies on 26 March 2017 and four participants of rallies on 12 June 2017 have been imprisoned or are under criminal investigation.
39. Previous regulations on freedom of assembly came into force in 2012 which included increases to existing penalties. Penalties increased up to 150 times for individuals and up to 300 times for organisations that violated rules on participation in, and organisation of, peaceful protests. The new maximum penalty for participation in a protest that is not in accordance with government regulations is RUB 300,000 (USD 5,200) for individuals, while organisations face fines up to RUB 1,000,000 (USD 17,400). These regulations were introduced after the protest rally on Bolotnaya Square in Moscow on 6 May 2012 which resulted in mass detentions of participants and police violence. During 2013-2017 the authorities continued highly politicized criminal prosecutions of participants of this action on charges of public disorder and violence against police officers. Altogether 23 participants have been imprisoned up to four-and-a-half years.
40. During the 2013 UPR, Russia accepted numerous recommendations on freedom of assembly but has not implemented them or realized them in practice.
41. For example, Russia was recommended to ensure that “any sanctions for violations of freedom of assembly are proportionate and do not create undue obstacles to freedom of assembly”. However, everyday law enforcement practice during the reporting period has included detentions, fines and arrests for participation in peaceful assemblies making the participation in public events dangerous and unpopular.

42. Russia was recommended to “take necessary measures to ensure that legal provisions do not create disproportionate restrictions to exercise freedom of assembly and expression”. In practice both the legislative framework and local authorities’ decisions on citizens requests to hold public events, make proper organizing of events almost impossible.
43. Despite numerous recommendations Russia continues to practice a ban on any attempts of LGBTQ people to gather and hold public events. Local authorities refused all requests to hold gay pride parades, and during 2013-2016 OVD-Info recorded detentions at 36 events on LGBTQ topics in Moscow and Saint-Petersburg.
44. Russia also was recommended to “Intensify cooperation with the Council of Europe, in particular the Venice Commission, in properly implementing freedom of association and assembly”. In practice Russia ignored recommendations of the Venice Commission on new legislation on public events and did not respond to the Commissioner for Human Rights’ requests on the issue. The implementation of the European Court of Human Rights judgments on violations of freedom of assembly in Russia has also been partial: the state pays compensation to applicants but does not take into account systemic violations noted by the court, e.g. in the judgment *Lashmankin and Others v. Russia* (February 2017), the Court states that the authorities display zero tolerance towards “unauthorized” (non-approved) assemblies, even if they are peaceful and don’t create any disruption to ordinary city life.

Recommendations

45. **Stop arbitrary detentions and criminal prosecution of participants of peaceful public events and protests;**
46. **Investigate cases of police violence against participants of public events;**
47. **Cancel restrictive amendments to legislation introduced in 2012 and 2014 in relation to peaceful assembly;**
48. **Review legislative framework on public events in accordance with international law and obligations;**
49. **End the arbitrary interpretation of notification principle for holding public events;**
50. **End the policy of discrimination against rights of LGBT people who gather publicly and peacefully protest;**
51. **Ensure timely and transparent cooperation between Russian state bodies and governmental human rights institutions and international organisations such as UN Special Procedures and the Council of Europe.**