

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

REFERENCE:
AL RUS 9/2019

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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; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 41/12; 34/18, and 34/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning raids, seizures of property, prosecution, dissolution and interdiction relating to the human rights NGOs Justice Initiative, Memorial, Center of Support for the Indigenous Peoples of the North, Siberia without Torture and People in Need.

The Justice Initiative project is a non-governmental organisation dedicated to the legal protection of victims of human rights violations connected to armed conflict and counter-terrorism operations, torture and gender-based violence in the post-Soviet region. It seeks to ensure that victims of abuses have access to effective legal remedies on the domestic level, and utilize international mechanisms, including the European Court of Human Rights, when domestic remedies are inadequate.

Memorial is a human rights NGO which provides legal assistance to victims of human rights violations.

Center of Support for the Indigenous Peoples of the North (hereinafter referred to as **CSIPN**) is a non-governmental organisation that works to protect the rights of the indigenous peoples of Siberia and the Russian North and Far East. CSIPN is accredited by several UN entities and is the leading organization working on indigenous rights in Russia.

Siberia without Torture, is a non-governmental organisation which monitors cases of alleged torture and inhumane treatment in the Irkutsk region.

People in Need is a non-governmental, non-profit humanitarian organisation based in the Czech Republic. It provides emergency aid to people in need in the event of a natural disaster or wartime crisis, and offers long-term support for people living in poverty and poor conditions.

Similar actions against human rights NGOs in Russia have been raised in previous communications, notably within the framework of the Law on Introducing Amendments to Certain Legislative Acts of the Russian Federation Regarding the Regulation of Activities of Non-commercial Organizations Performing the Functions of Foreign Agents (hereafter, 'Foreign Agent Law'). The adoption and application of this law was the subject of previous communications sent on 11 July 2012 (case no. RUS 5/2012); 13 June 2013 (case no. RUS 3/2013); 18 December 2013 (case no. RUS 13/2013); 20 June 2014 (case no. RUS 5/2014); 14 November 2014 (case no. RUS 9/2014); 7 August 2015 (case no. RUS 4/2015); 25 February 2016 (case no. RUS 2/2016); 14 April 2016 (case no. RUS 4/2016); 11 August 2016 (case no. RUS 8/2016) and 17 July 2019 (case no. RUS 5/2019). We acknowledge the replies from your Excellency's Government dated 23 July 2012, 19 February 2014, 25 August 2014, 16 November 2015, 23 May 2016, 31 May 2016, 14 October 2016, and 13 September 2019, however we remain concerned given the allegations below.

According to the information received:

Concerning Justice Initiative

On 14 August 2019, the Moscow office of the Justice Initiative was raided by the Federal Security Service and the Special Rapid Response Unit (SOBR). The SOBR officers were reportedly armed with machine guns and, without presenting a search warrant, began to examine the cabinets of the Justice Initiative. The SOBR officers allegedly confiscated and demanded access to phones. Employees were forced to unlock the screens and SOBR officers read their correspondence in instant messengers. The SOBR officers then photographed the employees' passports and tried to open the office of the director of the organisation. The SOBR officers claimed to have a search warrant for "the entire building". They left after approximately one hour. No documents of the Justice Initiative were seized.

On 15 August 2019, the Main Directorate of the Ministry of Internal Affairs for the North Caucasus Federal District issued a decree stating that, "[a]s a result of measures taken to identify persons involved in the unrest that took place on 27 July 2019 and 3 August 2019 in Moscow, it was established that one of the organisers of the unauthorised protest rallies is an unidentified group of persons who are the coordinators of the activities of autonomous non-profit organisations and public associations located on the territory of the North Caucasus Federal District that receive foreign funding. The indicated group of persons may be involved in organising and conducting unauthorised protests and rallies in the North Caucasus region, accompanied by riots, and also, using the opportunities of non-profit organisations, from the funds received from abroad, can finance the above-mentioned illegal actions and extremist actions in order to destabilise the socio-political situation in the region." Despite the vague wording, the decree also identified the address of the office of the Justice Initiative, and gave the authorities the mandate for the searches.

On 16 August 2019, the Department of the Ministry of Internal Affairs in the North Caucasus Federal District conducted a search at the office of Justice Initiative in Nazran, Ingushetia. The search ended after seven hours and the Justice initiative's documentation for the years 2017 – 2019 was seized, including agreements with lawyers on cases submitted to the European Court of Human Rights.

According to information received, Justice Initiative has not been working on any of the cases connected to the Moscow events in July-August 2019 mentioned above, however, the office in Nazran works on the cases of seven detainees arrested during protests in Ingushetia in March 2019.

Concerning Memorial

Memorial was placed on the government's register of "foreign agents" in 2015, in the framework of the above-mentioned Foreign Agent Law.

On 22 October 2019, the Tverskoy Court of Moscow fined the organisation 300,000 RUB for not stating its status as a "foreign agent" on YouTube. The chairman of the Memorial Board, Jan Rachinsky, was fined a further 100,000 RUB for not consistently labelling Memorial as a "foreign agent" on Facebook.

Memorial's alleged violations of the Foreign Agent Law were uncovered as a result of an investigation by the Roskomnadzor (Federal Service for Supervision of Communications, Information Technology and Mass Media), after Ingushetia's Federal Security Service district filed a complaint. Although Memorial's YouTube and Facebook pages list the organisation as a "foreign agent" in their description, Roskomnadzor insists that every single social media post should make reference to Memorial's foreign agent status.

On 31 October 2019, State agents from the Center for Counter-Terrorism and Anti-Extremism, the Ministry of the Interior and the Federal Security Service seized some of Memorial's key working equipment during their search of the NGO's office, including several computers, a notebook, and financial and other documents.

On 7 November 2019, Roskomnadzor drew up four violation statements against Memorial Human Rights Centre (part of Memorial) and its chairman, Aleksander Cherkasov, for not labelling Memorial as a "foreign agent" on Twitter and Vkontakte. Memorial's alleged violation of the Foreign Agent law, as in the previous case, was reported by Ingushetia's Federal Security Service office, which also reported the case to Ingushetia's regional prosecution office.

As of 7 November 2019, twenty violation statements have been filed against Memorial for not stating its "foreign agent" status on social media and on its

website. The Tverskoy Court in Moscow has already reviewed six violation statements against Memorial and fined the organization 1,400,000 RUB in total.

A criminal case over “illegal logging” (Article 260 of the Russian Criminal Code) was opened against Memorial after its volunteers organised an expedition to Galyashor, in the Perm region, during the summer of 2019, to clean up a monument dedicated to the memory of Lithuanians and Poles persecuted during the Soviet regime. Under Article 260, Memorial’s volunteers could face up to three years’ imprisonment. In October 2019, the Ministry of Natural Resources of Perm fined Memorial 200,000 RUB for “unauthorised occupation of forest plots”.

Concerning CSIPN

On 6 November 2019, the Moscow City Court upheld the claim of the Ministry of Justice on the dissolution of the Center of Support for the Indigenous Peoples of the North (CSIPN). The decision was justified by CSIPN’s failure to comply with certain administrative formalities, such as outdated legal address of the organisation, non-compliance of the Charter with new legislation. The closure of the Center is considered to be disproportionate punishment for administrative irregularities of this kind. The organisation had already begun to correct the documentation, but the Moscow City Court refused to give time for the final elimination of violations.

Concerning Siberia without Torture

On 12 December 2019, officers of the Ministry of Interior and the Investigative Committee of the Russian Federation searched the premises of Siberia without Torture, which is also the residence of the organisation’s leader Sviatoslav Hromenkov. Sviatoslav Hromenkov was abroad at the time of the search, but his mother, Natalia Hromenkova, and a lawyer were present. Natalia Hromenkova is a woman human rights defender and a lawyer for Siberia without Torture. During the search, the officers confiscated cash flow statements for the period from September to December 2019, as well as equipment belonging to the organisation, including three computer systems, three staff notebooks, equipment for live-streaming, external hard drives, flash drives and memory cards. Natalia Hromenkova’s phone as well as 184 000 roubles went missing after the search, and there is no official record for the confiscation of equipment. The investigating officer dismissed a request to film the search. Reportedly, falsified documents were planted on the site, which appeared to have flow charts, names of different legal entities, financial information, as well as the name of Hromenkov. The search lasted a total of 12 hours.

On 17 December 2019, the Ministry of Interior and the Investigative Committee searched the apartment of the organisation’s psychologist Natalia Varshnei, who is also the wife of Sviatoslav Hromenkov. The authorities did not allow their lawyer access to the premises.

The searches were carried out as part of a criminal investigation into alleged fraud opened on 10 December 2019. According to the report of the regional office of the Federal Security Service, the authorities allege that Sviatoslav Hromenkov was involved in the crime. The investigators who conducted the searches on 12 and 17 December 2019 transported their own witnesses to the sites, and refused to invite impartial witnesses chosen at random from the street, which is the customary practice in the region.

Concerning People in Need

On 12 November 2019, the Ministry of Justice of the Russian Federation placed People in Need on the government's list of “undesirable foreign and international non-governmental organisations on the territory of the Russian Federation” based on the decision of the Russian Deputy Prosecutor General on 7 November 2019, who reportedly provided no grounds for the decision.

As a result of being declared “undesirable” in Russia, People in Need is forced to cease its activities in the country to avoid heavy sanctions, jail sentences and putting its partners at risk. As a result of this decision, Russian human rights advocates have been cut off from an important international source of support, funding and advocacy. In addition, collaboration with People in Need may lead - as with any “undesirable organisation” - to the criminal prosecution of Russian citizens.

The Russian law on “undesirable organisations” came into force in 2015, establishing administrative and criminal liability for “undesirable” international non-governmental organisations, their executive officers and persons associated with such organisations. The law gives the Prosecutor General the power to declare “undesirable” any foreign or international non-governmental organisation that “represents a threat to constitutional rule, national defence capacity or national security”, and to ban its activity on Russian territory, punishing individuals who collaborate with them. The grounds for declaring an organisation “undesirable” are formulated in extremely broad terms, opening the way to its arbitrary application. Violators face fines or prison terms of up to six years. In addition, any Russian citizen or organisation cooperating with an undesirable organisation faces administrative penalties and, in the case of individuals, even criminal liability.

People in Need joins a list of nineteen international NGOs that have been declared “undesirable” since 2015.

We express serious concern at the proceedings brought against these non-governmental organisations, ranging from administrative fines and raids to dissolution. These measures appear to be aimed at stopping the organisations from continuing their human rights work. Moreover, the actions taken against them appear manifestly

disproportionate in regard to the administrative 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 Agents Law. In particular, we remain concerned about the highly detrimental impact of the 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 expression in the country.

We further express our concern with regard to the law on “undesirable organisations.” Concerns relate to a lack of legal certainty leading to potentially arbitrary application, and the proportionality of sanctions. Such concerns are illustrated by the wide discretionary powers granted to the Prosecutor’s Office and the executive authorities combined with the absence of prior judicial review. The application of the law on undesirable organisations thereby appears to pose a clear threat to the right of freedom of association in the country.

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/or any comment(s) you may have on the above-mentioned allegations.
2. Please provide detailed information on the legal and factual bases for the actions taken against the non-governmental organisations Justice Initiative, Memorial, CSIPN, Siberia without Torture and People in Need, along with information on how these are compatible with international law.
3. Please provide detailed information on the considerations and justifications involved in deeming the organization ‘People in Need’ as “a threat to the foundation of the constitutional order of the Russian Federation, national defence or state security” under the 2015 law on “undesirable organisations”.
4. Please provide information on how the aforementioned implementation and interpretation of the provisions contained in the Foreign Agent Law are in line with the Russian Federation’s obligations under international human rights law, in particular with articles 19 and 22 of the ICCPR on the rights of freedom of expression and of association.

5. Please indicate the measures adopted to ensure that human rights defenders and organisations are able to carry out their legitimate work in the Russian Federation in a safe and enabling environment without fear of persecution, violence or harassment of any sort.

We would appreciate receiving a response within 60 days. Passed 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.

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

David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Michel Forst
Special Rapporteur on the situation of human rights defenders

Annex
Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw your attention 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 respectively.

The freedoms of opinion and expression form a basis for the full enjoyment of a wide range of other human rights. [It is] is integral to the enjoyment of the rights to freedom of assembly and association, para. 4. The right to freedom of expression "protects all forms of expression and the means of their dissemination", para. 12. Consequently, attaching requirements to expressions in different forums is tantamount to a restriction on the rights guaranteed under Article 19 (2) ICCPR. Furthermore, we recall that privileged attorney-client information enjoys strong protection under Articles 17 and 19 of the ICCPR. Any restriction, for example in the form of confiscation of documents, is of a particularly serious nature.

In particular, we wish 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 aim pursued. In this regard, we remind that the State has the burden of proof to demonstrate whether the restrictions implemented are compatible with the requirements under the Covenant.

The legitimate aims must be restricted to those exhaustively listed in the ICCPR, see CCPR/C/21/Rev.1/Add. 13 para. 6. Furthermore, the requirement of legality entails that the law "must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly and it must be made accessible to the public. A law may not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution", para 25. Lastly, the proportionality requirement entails that the restriction "must be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve their protective function; they must be proportionate to the interest to be protected", para. 34.

We would also like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, 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 to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

Furthermore, 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 (b) and (c) which stipulate that everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the purpose of peacefully promoting and protecting human rights and fundamental freedoms.

In connection to article 13 of the Declaration, Human Rights Council Resolution 22/6 calls upon States to ensure that reporting requirements placed on individuals, groups and organs of society do not inhibit functional autonomy, and that they do not discriminatorily impose restrictions on potential sources of funding aimed at supporting the work of human rights defenders other than those ordinarily laid down for any other activity unrelated to human rights to ensure transparency and accountability. No law should criminalize or delegitimize activities in defence of human rights on account of the origin of funding thereto (A/HRC/RES/22/6, OPs 8 and 9).

We would like to recall that the Special Rapporteur on the situation of human rights defenders noted in his report to the Human Rights Council (A/64/226) that the only legal grounds upon which an interference with the freedom of association that is prescribed by law can be justified is if it meets the test as outlined by article 22, paragraph 2 of the ICCPR. This provisions requires the interference in question to be pursuant to 'legitimate aims', such as in the interests of national security or public safety; public order; the protection of public health or morals, or the protection of rights and freedoms of others. Without such a legitimate aim, interference is rendered contrary to international human rights law, and in the context of the activities of NGOs, the Special Rapporteur has argued that "difficulties in the formation and registration of human rights associations; criminal sanctions for unregistered activities; government interference, supervision and monitoring of NGO activities; and difficulties in accessing funding may restrict the right to freedom of association and therefore must reach the very high threshold under article 22, paragraph 2, of the International Covenant on Civil and Political Rights in order to be admissible." (A/64/226, para. 58.)

Furthermore, in the context of the Law on Introducing Amendments to Certain Legislative Acts of the Russian Federation Regarding the Regulation of Activities of Non-commercial Organizations Performing the Functions of Foreign Agents, we recall the report by the Special Rapporteur on the rights to freedom of peaceful assembly and of association (A/HRC/23/39), in which he called upon States to, *inter alia*, "recognize that undue restrictions to funding, including percentage limits, is a violation of the right to freedom of association" (para. 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" (para. 82 (d)). He also urged 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 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.”(para. 82 (b)).