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RUSSIA: TEN URGENT HUMAN RIGHTS TASKS FOR THE NEW DUMA

On 19 September, the Russians voted for new State Duma deputies. The parliament has a crucial role in ensuring implementation of human rights, through its legislative function and oversight of the executive. The outgoing Russian lawmakers, many of whom are joining the new Duma, are responsible for adopting a host of laws that have further encroached on human rights in Russia, and have turned a blind eye to some of the gravest human rights issues in the country.

Russia's Constitution and international obligations require that the authorities respect, protect, promote and fulfil the rights to freedoms of expression¹, peaceful assembly², association³, freedom from torture and other ill-treatment⁴ and from discrimination⁵ and other human rights.

Whilst in the present political climate it would be naïve to expect the new Duma to be a champion of human rights, this document is a reminder to all newly elected lawmakers of some of the most pressing, specific matters over which they have direct responsibility as members of the legislature to take action, and ensure Russia's full and effective compliance with its human rights obligations in accordance with international law and the country's Constitution.

These are only some of the most pressing steps the new Duma should consider as a matter of utmost priority.

1. PROTECT FREEDOM OF EXPRESSION: END BLOCKING OF WEBSITES

There are numerous laws and practices, which the authorities in Russia routinely deploy to curtail the right to freedom of expression, including blocking of online content without judicial review, on request of various state bodies under contentious pretext.⁶

As recently as 5 August 2021, the Prosecutor General's Office arbitrarily banned websites of several media outlets linked to Mikhail Khodorkovsky, an exiled Kremlin critic and former prisoner of conscience. These were forced to shut down for fear of further reprisals against their staff.

The right to freedom of expression may be restricted under very limited circumstances. The restriction must be provided by law, pursue a legitimate objective, and be necessary and proportionate to achieve it.⁷ The current Russian legislation and practice of blocking access to online resources do not meet these criteria. It is routinely used by the executive for political purposes.

The respective provisions in the Law on Information and other legislation must be abolished.

2. DECRIMINALIZE LIBEL AND REPEAL LAW ON "OFFENDING RELIGIOUS FEELINGS"

Criminalization of libel is a direct attack on the right to freedom of expression. Libel was decriminalized in Russia in 2011, but the respective "crime" was reinstated in 2012 envisaging up to five years' imprisonment,⁸ along with the "crime" of "publicly displaying manifest disrespect for the society and aiming at offending religious feelings of believers," punishable by up to three years' imprisonment.⁹

¹ Article 19 of the International Covenant of Civil and Political Rights (ICCPR), Article 10 of the European Convention on Human Rights (ECHR), Article 29 of the Constitution of the Russian Federation

² Article 21 of ICCPR, Article 11 of ECHR, Article 31 of the Constitution

³ Article 22 of ICCPR, Article 11 of ECHR, Articles 13(4) and 30 of the Constitution

⁴ Article 7 of ICCPR, Article 3 of ECHR as well as the entire Convention against Torture, Article 21 of the Constitution

⁵ Article 26 of ICCPR, Article 14 of ECHR, Article 2(2) of the International Covenant on Economic, Social and Cultural Rights, Article 19(1) of the Constitution

⁶ Articles 15.1 – 15.9 of the Federal Law on Information, Information Technologies and Protection of Information

⁷ Article 19(3) of the ICCPR

⁸ Article 128.1 of the Criminal Code

⁹ Article 148(1) and 148(2) of the Criminal Code

These legal provisions have been used to harass, intimidate and prosecute independent journalists, human rights defenders, activists and others, including critics of the authorities who exposed human rights violations, allegations of corruption and other abuses. Individuals who shared satirical content on religion-related topics have been persecuted for “offending religious feelings.”

Expressing one’s views or sharing information, no matter how offensive or unpopular, is protected as legitimate expression. The law must guarantee the right to freedom of expression for everyone, and not be subject to abuse in religious, economic or other disputes. Laws that criminalize protected expression must be repealed.

3. ABOLISH “FAKE NEWS” LAWS

The recently-adopted (in the context of the Covid-19 pandemic), “anti-fake news” legislation¹⁰ provides for administrative and criminal liability, with a maximum penalty of five years’ imprisonment, for “public dissemination of knowingly false information” on a wide range of issues. Its language is vague and leaves it to wide interpretation and abuse.

These laws should be repealed. The authorities should focus on ensuring that accurate facts and diverse opinions are accessible to everyone in Russia.

4. PROTECT FREEDOM OF ASSEMBLY, REPEAL UNDULY RESTRICTIVE LAWS

The successive legislative changes of recent years have created a “legal labyrinth” for organizers and participants of peaceful protests and provided officials with pretexts for interfering with, or plainly denying, the right to freedom of peaceful assembly. The existing, *de facto* permission-based practice has denigrated this basic human right to a privilege which local authorities give or very often refuse at whim. Peaceful attempts to exercise this right – even the slightest deviation from the unduly restrictive rules – is punishable by heavy fines and short and long-term imprisonment, and the situation continues to deteriorate.¹¹ In numerous cases, peaceful protesters have been penalized even while trying to observe the rules.

In the past 10 years, the number of protest-related “offences” has increased from three to 17, while respective penalties have increased more than a hundred-fold. In 2014, Article 212.1 (so-called “Dadin’s article”) of the Criminal Code made four consecutive administrative offences, however insignificant, a criminal offence if committed within 180 days. The Constitutional Court prohibited its application to peaceful protests; however it continues to be applied, with alarming increase. Spontaneous protest is banned altogether, in violation of international human rights norms, including binding judgments of the European Court of Human Rights.

The Law on Assemblies, the Code of Administrative Offences, the Criminal Code and other legislation should be amended to ensure that everyone can freely exercise their right to freedom of peaceful assembly, without fear or police violence or reprisals. Amongst other provisions, spontaneous assemblies should be allowed, and Article 212.1 abolished.

5. PROTECT FREEDOM OF ASSOCIATION: REPEAL LAWS ON “FOREIGN AGENTS” AND “UNDESIRABLE ORGANIZATIONS”

The adoption of progressively restrictive amendments to, and aggressive (yet selective) application of laws on “foreign agents” and “undesirable organizations” is an affront to the right to freedom of association. First applicable to NGOs but currently also to informal (unregistered) groups, media outlets and individuals, the “foreign agents” law uses deliberately broad language on “political activities” that is applicable to any independent civic and media work or individual critical of the government. Similarly, “foreign funding” is a technicality that is difficult to avoid for any group or person, and easy to engineer as a provocation. The law serves the sole purpose of smearing and penalizing criticism and dissent. It has allowed the authorities to target, harass and intimidate numerous NGOs, mass media outlets and individuals, and forced them to carry this toxic label, follow onerous reporting requirements and face unlawful restrictions (such as the inability to hold government office, monitor elections, etc.) or face severe administrative or criminal penalties.

The law on so-called “undesirable organizations”, introduced in 2015 and recently amended, allows Russian authorities to arbitrarily and without any clearly defined criteria or substantive grounds ban activities of any foreign entity and criminalize any association with it, however tenuous. All 46 organizations currently designated “undesirable” work to promote democracy, human rights, educational activities or peaceful religious practices. Dozens of people have been

¹⁰ Articles 13.15(9) – 13.15(11) of the Code of Administrative Offences and Articles 207.1 and 207.2 of the Criminal Code

¹¹ See Amnesty International’s recent report *Russia: No Place for Protest*, 12 August 2021, [amnesty.org/en/documents/eur46/4328/2021/en](https://www.amnesty.org/en/documents/eur46/4328/2021/en)

fined and several prosecuted for nothing more than “participating in activities of an undesirable organization”, often on unsubstantiated grounds.

Legislation on “foreign agents” and “undesirable organizations”¹², which allows the government to arbitrarily ban, restrict or interfere with legitimate activities of civil society groups and individuals, should be repealed as it is incompatible with the Russian Constitution and international human rights standards, and all those prosecuted for “violations” should be afforded access to justice and effective remedies.

6. AMEND ANTI-EXTREMISM LAWS TO PREVENT THEIR ARBITRARY USE

Russian “anti-extremism” legislation, through its very broad definition and severe penalties and restrictions for those deemed to be engaged in, or supporting, “extremism”, is frequently abused to stifle human rights including the right to freedom of expression, and to repress certain religious and civil society groups.

For instance, since the Jehovah’s Witnesses were arbitrarily proclaimed “extremist” in 2017, hundreds of their adherents have been prosecuted and dozens given long prison sentences. In June this year, the Anti-Corruption Foundation and two other organizations linked to Aleksei Navalny were arbitrarily designated “extremist” in a secret trial, despite there being no proof of actual or intended violence or other criminal offence. The real reason for their banning was their lawful anti-corruption and political activities.

The “anti-extremist” legislation¹³ should be reviewed to ensure that it is fully consistent and compatible with Russia’s obligations under international human rights law and its Constitution, and that it cannot be abused for political purposes.

7. ABOLISH HOMOPHOBIC AND DISCRIMINATORY LEGISLATION

Equality before the law, including regardless of one’s sexual orientation and gender identity, is a human right. Among the laws that explicitly violate this right is the prohibition of “promotion of non-traditional sexual relations among minors”.¹⁴ Not only is this legislation openly homophobic, it is often used in practice to ban lesbian, gay, bisexual, transgender and intersex (LGBTI) people from any public discussion or even mere expression of issues relating to their sexual orientation or gender identity. Same-sex partners are denied legal means of recognition of their relationship, as a marriage or otherwise, and denied legal rights and opportunities commonly enjoyed by married couples, from adoption and property co-ownership to hospital visits and mundane issues taken for granted by others. Moreover, since the adoption of the homophobic legislation on “propaganda”, LGBTI activists and human rights monitors have documented growing homophobia and an increase in hate-based violence. Activists across Russia have faced unfounded administrative proceedings and heavy fines in retribution for their human rights work in support of LGBTI people.

The homophobic “propaganda” legislation must be immediately repealed, and all discriminatory legal provisions abolished to ensure that everyone enjoys the same legal rights, together with their loved ones, regardless of their sexual orientation or gender identity.

8. ADOPT A LAW ON DOMESTIC VIOLENCE

Domestic violence remains an extremely widespread problem that affects countless people, particularly women, across Russia.¹⁵ There is no relevant reliable official or independent statistics, but even conservative estimates suggest that thousands of women die in Russia each year as a result of domestic violence, to say nothing of the survivors who face violence at home on a daily basis and are effectively left unprotected by law and unable to find help in the face of their abusers.

¹² It includes Article 29.1 of the Federal Law on Social Associations, Articles 19.2 and 25.1 of the Federal Law on Mass Media, Articles 19.7.5-2, 19.7.5-4, 19.34, 19.34.1 and 20.33 of the Code of Administrative Offences, Articles 284.1 and 330.1 of the Criminal Code as well as other laws

¹³ It includes the Federal Law on Prevention of Extremist Activities, Articles 13.37, 20.3 and 20.29 of the Code of Administrative Offences, Articles 280, 280.1, 282, 282.1 – 282.3 of the Criminal Code as well as other laws

¹⁴ Article 6.21 of the Code of Administrative Offences

¹⁵ See for example, Human Rights Watch, “I Could Kill You and No One Would Stop Me”, 25 October 2018, [hrw.org/report/2018/10/25/i-could-kill-you-and-no-one-would-stop-me/weak-state-response-domestic-violence](https://www.hrw.org/report/2018/10/25/i-could-kill-you-and-no-one-would-stop-me/weak-state-response-domestic-violence)

Russian and international human rights groups and activists, as well as survivors of domestic violence, have been calling for years for the adoption of a law on domestic violence. In a growing number of cases, the European Court of Human Rights has found Russia in violation of the prohibition of torture and discrimination¹⁶.

Yet the lack of official recognition of this problem in Russia is shocking¹⁷, and no law on domestic violence has yet been adopted. Moreover, the only recent legislative change in this area has been regressive and damaging. In 2017, the outgoing Duma decriminalized some forms of domestic violence including battery.

The new Duma should, as a matter of urgency, develop a strong bill on domestic violence in cooperation with expert civil society organizations, and adopt it without delay.

9. INTRODUCE LEGAL DEFINITION OF TORTURE AND STRENGTHEN RELEVANT LEGISLATION

Torture and other ill-treatment are endemic in Russia's criminal justice system, while legal remedies against them are weak and ineffective. Moreover, torture and other ill-treatment still have no legal definition in Russian law. The use of the term "torture" in Russian legislation is inconsistent with its internationally recognized definition, including that contained in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which Russia is a state party. In cases where officials are implicated in torture and other ill-treatment, they are prosecuted under a broadly defined crime of "abuse of authority with the use of violence or threat of violence".¹⁸ This approach is inconsistent and incompatible with international standards, as it is open to wide interpretation and abuse, and does not allow even for collection of accurate criminal statistics. It complicates the use of existing mechanisms provided by international and regional treaties of which Russia is a state party, including the Istanbul Protocol for instance. It overall makes investigation and prosecution of relevant cases difficult and often results in a lack of accountability for torture and other ill-treatment.

As a first and immediate step in combating torture, a separate crime of "torture, cruel, inhuman or degrading treatment or punishment" should be introduced in the Criminal Code and be consistent with its international definition. As a next step parliamentarians should revisit and reform the existing legislation to ensure legal remedies against torture are strong, effective and easily accessible for everyone in Russia.

10. ENSURE PARLIAMENTARY SCRUTINY OF THE EXECUTIVE OVER ITS HUMAN RIGHTS RECORD AND REPORTED VIOLATIONS

The role of a parliament is not only to pass laws but also to scrutinize the executive over their application. While the mechanisms of parliamentary scrutiny need to be strengthened to ensure their effectiveness, the existing Federal Law on Parliamentary Inquiry of the Federal Assembly gives the parliament the relevant tool for the purpose of protecting human rights guaranteed by the Constitution. Disappointingly, parliamentary inquiries have been extremely rare in recent years, despite numerous documented human rights violations and ongoing crises. The outgoing Duma has effectively turned a blind eye to some of the most serious and persistent human rights issues in Russia, including those mentioned above, and ranging from the failure to ensure the right to a healthy environment and the right to health in the face of the Covid-19 pandemic, to the campaign of abduction, torture and killing of LGBT people in Chechnya, to alleged assassinations and attempted killings of government critics, to mass arrests and beatings of peaceful protesters in the streets of Russian cities and towns, to name just a few. These have effectively gone unnoticed by the Russian parliament.

The new Duma should fulfil its duty to independently scrutinize the executive over its human rights record and its specific actions or inaction, and make its findings public, stimulate open debate, and champion protection of human rights in Russia.

¹⁶ See for example, *Volodina v. Russia*, no. 41261/17, ECHR 2019

¹⁷ For example, in 2019, Russian Ministry of Justice officially told the European Court of Human Rights that "the scope of the problem of violence within family and household as well as the gravity and extent of its discriminatory effect on women in Russia is sufficiently exaggerated", according to media reports.

¹⁸ Article 286(3)(a) of the Criminal Code