

# EHRAC

## Bulletin

## Russia's New Law on Foreign Agents Raises Significant Concerns for Civil Society

05.11.2012, Awaz Raouf, Lawyer

Russia has recently adopted a series of measures which could potentially restrict civil society activities, and have disastrous repercussions for civil liberties and human rights within the State.

In July 2012, President Vladimir Putin signed into law a controversial bill, under which non-governmental organisations (NGOs) in receipt of foreign funding and conducting political activities must register as 'foreign agents', and comply with an onerous disclosure and reporting regime (the 'Law'). Failure to comply with the new regime can result in the suspension of the NGO and/or criminal convictions for the individuals responsible. In Oc-

tober 2012, Russia's parliament also approved amendments which would broaden the definition of 'treason' to include all forms of assistance to foreign states or international organisations directed at harming Russia's security.

Although it is premature to determine the precise impact of these measures, there is a real risk that their wide and ambiguous provisions could lead to self-censorship, intrusive government surveillance, and arbitrary interferences with the rights to freedoms of expression and association.

### The Law

Under the Law, which enters into force on 21 November 2012, an NGO

which receives or intends to receive funding from a 'foreign source', and which conducts or intends to conduct 'political activities', must register as an NGO 'performing the functions of a foreign agent' ('Foreign Agent'). The regime imposes several obligations on Foreign Agents, the key aspects of which can be categorised under the following headings: Registration, Public Disclosure, and Financial Reporting.

**Registration:** Details of the registration procedure are not laid out in the Law. It is expected that the author-

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ised governmental body responsible for administering the scheme (likely to be the Ministry of Justice) will determine these details. There is a concern that the registration procedure will create significant administrative and financial burdens for registering entities.

**Public Disclosure:** Materials published and/or distributed by the Foreign Agent must disclose its status as a 'foreign agent'. The Russian translation of the term 'foreign agent' carries a particular stigma, it being a synonym for the term 'foreign spy'. This disclosure obligation is therefore likely to stain the Foreign Agent's reputation and publications, and to provoke heightened governmental surveillance of the disclosing entity.

**Financial Reporting:** Foreign Agents are required to meet onerous financial reporting obligations. These obligations are likely to demand significant time and resources, restricting the Foreign Agent's ability to perform its day-to-day functions.

Certain types of NGOs are excluded from the scope of the Law, including state entities. However, it is anticipated that most human rights NGOs operating within Russia will require registration as Foreign Agents under this new regime. The deputy head of Russia's Central Election Commission, Leonid Ivlev, has reportedly stated that election observers from non-governmental organisations registered as Foreign Agents must openly declare their registered status.<sup>1</sup> Due to the ambiguous definitions of 'foreign sources' and 'political activities', the status of NGOs performing a hybrid of political and non-political activities is not clear.

The sanctions for failing to comply with the regime are extremely onerous, and prone to arbitrary implementation. An authorised government official has the power to suspend the activities of an NGO which (s)he considers to be a Foreign Agent, and which has failed to apply for registration. The risk of arbitrary suspension

is compounded by the ambiguous definition of Foreign Agent, which is likely to result in disputes between the government and NGO over the nature of the NGO's activities. The legal consequences of the suspension are unclear. In addition, the Law introduces criminal sanctions in respect of the regime, which can result in fines or imprisonment.

The debilitating effects of the Law have already started to emerge. Representatives of many human rights NGOs operating in Russia have reported that they will refuse to register themselves as Foreign Agents, with some admitting that they will need to cut back their activities and staff as a result.<sup>2</sup>

### Recent Deterioration of Human Rights Standards in Russia

Several international bodies have expressed their concern over the Law, as well as the recent erosion of human rights standards in Russia more generally. The United Nations High Commissioner for Human Rights, Navanethem Pillay, recently urged the Russian Government "to avoid taking further steps backwards to a more restrictive era, and to make strenuous efforts to limit the detrimental effects of the laws and amendments already passed over the last few weeks".<sup>3</sup>

Similarly, in a resolution adopted on 13 September 2012, the European Parliament expressed its "concern about the deteriorating climate for the development of civil society in Russia, in particular with regard to the recent adoption of a series of laws governing demonstrations, NGOs, defamation and the internet which contain ambiguous provisions and could lead to arbitrary enforcement."<sup>4</sup> It called on the

Russian authorities to amend the Law "to safeguard citizens' associations that receive financial support from reputable foreign funds from political persecution".<sup>5</sup>

The recent wave of draconian laws has not shown signs of breaking. In October 2012, Russia's parliament approved amendments drafted by

the Federal Security Service, which would broaden the definition of 'treason' to include financial, technical, advisory or other assistance to foreign states or international organisations which are directed at harming Russia's security. The new definition could potentially be used to criminalise legitimate civil society campaigns and political debate, resulting again in a prison sentence for the person convicted of such crime.

### Next Steps

Despite the ambiguity and uncertainty surrounding the interpretation, application and enforcement of the Law on Foreign Agents, it is without doubt a potentially harmful measure which could stifle civil society activities, with disastrous consequences for, in particular, the rights to free speech and association. These concerns are already manifesting themselves in practice, as many human rights organisations refuse to comply with the law, forcing them to downsize their operations. The President is also expected to imminently sign into law the expanded definition of treason. In light of the recent deterioration of human rights standards in Russia more generally, these measures deserve close attention by the international human rights monitoring bodies and the wider international community.

1 RIA Novosti, 2012. Election Official: Observers Must Reveal NGO Status, [online]. Available at: <http://en.rian.ru/russia/20120918/176040990.html> [accessed 10 October 2012].

2 RIA Novosti, 2012. HR groups blast 'foreign agents' bill, plan to refuse outside aid, [online]. Available at: <http://rt.com/politics/foreign-agents-rights-activists-120/> [accessed 10 October 2012].

3 OHCHR Press Release, 18 July 2012. Pillay con-

cerned about series of new laws restricting human rights in Russian Federation, [online]. Available at: <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12366&LangID=E> [accessed 10 October 2012].

4 European Parliament, Resolution adopted 13 September 2012, 2012/2789(RSP), [online]. Available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2012-0352+0+DOC+XML+V0//EN&language=EN> [accessed 10 October 2012].

5 *ibid.*