



PEN International and Russian PEN

**Contribution to the 16th session of the Working Group
of the Universal Periodic Review**

Submission on the Russian Federation

October 2012

1. PEN International and Russian PEN welcome the opportunity provided by the Office of the High Commissioner on Human Rights to comment on the state of human rights in the Russian Federation. This document focuses on encroachments upon freedom of expression and freedom of assembly in the country since the 2009 Universal Periodic Review (UPR).

Introduction

2. The Russian Federation is bound by international commitments to freedom of expression and freedom of assembly, having ratified the International Covenant on Civil and Political Rights in 1973. These rights are enshrined in Article 29 (freedom of speech) and 31 (freedom of assembly) of the Constitution of the Russian Federation. Despite these commitments, and the State's acceptance of recommendations arising from the 2009 UPR, the Russian Federation has failed to make progress towards fulfilling these guarantees..
3. PEN is especially concerned that during and following protests against both the parliamentary elections in 2011 and the presidential elections in 2012, writers and journalists have been targeted for attempting to exercise these fundamental rights.
4. In areas where steps were taken over the last four years to provide for freedom of expression, such as changes to libel laws, these have recently been reversed. Following his reinstatement as President and entry into office, President Putin has overseen the introduction of several new laws that further threaten citizens' abilities to exercise these rights.

Threats to Freedom of Expression

Harassment and Attacks on Journalists

6. Journalists continue to face harassment and attacks for reporting on politically sensitive issues, and many were detained for their coverage of the elections in 2011-2012. For example, opposition figurehead and reporter Alexei Navalny was detained for 21 days following protests over the parliamentary elections in December 2011. At the time of writing, another three journalists remain in detention following their coverage of an opposition rally following the presidential election on 4 March 2012. While much of the media is under state control, the few remaining independent voices that attempt to hold the state apparatus to account, such as *Novaya Gazeta*, continue to be targets for repression.

7. Harassment and detentions of journalists appear to have been stepped up following the re-election of President Putin in March 2012. For example, during protests against the President's inauguration between 6-9 May 2012 more than 50 journalists were detained briefly without charge.
8. PEN International remains concerned about the lack of progress towards justice for murdered journalists. 53 journalists have been killed in Russia over the last 20 years according to the records of the Committee to Protect Journalists, for exercising their right to free expression by reporting on issues pertaining to human rights abuses, conflict and corruption. Emblematic cases, such as the murders of Anna Politkovskaya (2006), and Natalia Estemirova (2009), remain unresolved at the time of writing.
9. Despite commitments by the Russian Federation during the 2009 UPR to fully investigate all such cases, there has been little evidence of sincere attempts to do so, and human rights organisations have exposed leads in these cases which have not subsequently been pursued by the authorities. The failure to adequately address such outstanding cases adversely impacts the ability of Russian citizens to exercise their right to seek and receive information as guaranteed under international free expression protections. As a result, journalists often resort to self-censorship in order to avoid serious conflicts with the authorities when reporting on sensitive topics.

Recriminalisation of Libel

10. In line with its commitment to promote freedom of expression, the Russian Federation decriminalised libel in January 2012, making it an administrative rather than criminal offence and thus bringing legislation into line with European standards. However, this move has recently been reversed, recriminalising slander and libel and imposing higher financial penalties for such offenses.
11. The text of the legislation particularly focuses on allegations against judges, prosecutors and law enforcement officials, with fines of up to 5 million rubles (£99,000) for false accusation relating to an individual's involvement in serious crimes.
12. PEN International is concerned about the additional pressure this puts on journalists and the negative impact this will have on freedom of expression, as many smaller, independent media outlets can not afford to take the risk of facing allegations under this new law. It seriously restricts the ability of journalists and civil society to monitor and report on abuses of power and thus threatens the independent voice of the fourth estate.

Use of Hooliganism and Extremism Laws

13. PEN International, like many other human rights organisations, has been alarmed by the use of hooliganism laws to suppress free speech. This was illustrated by the recent Pussy Riot case which has attracted widespread condemnation. Maria Alyokhina, Nadezhda Tolokonnikova and Yekaterina Samutsevich were arrested in March 2012 following their protest performance in a Moscow Cathedral, and in August 2012 were jailed for two years on charges of "hooliganism motivated by religious hatred".
14. This high profile case is just one example of how opposition voices are being silenced by the use of such laws. Hooliganism is an offense under Article 213 of the Russian Criminal Code, but remains poorly defined, which has allowed it to be increasingly used to target

those speaking or writing in support of the political opposition. The case of Pussy Riot also suggests a growing influence of the Russian Orthodox Church on the state.

15. PEN is also concerned about the free expression implications of proposed legislation currently before parliament that would criminalize "blasphemy" and increase the scale of fines for such offences. This could potentially be used to clamp down on critics of the Russian Orthodox Church and the government.
16. Similarly to the law against hooliganism, the lack of a clear definition of extremism in both the 2006 Law on Fighting Extremism and Article 282 of the Russian Criminal Code continues to be problematic. This has led to its misuse in courts across the country, in numerous cases targeting journalists, writers and artists who are critical of the Russian Orthodox Church, politicians or authorities. The need to review this legislation to ensure compatibility with international human rights standards was raised as a recommendation during the 2009 UPR and accepted by the Russian Federation.
17. In June 2011 the Supreme Court issued an official clarification that incitement to hatred under anti-extremism legislation does not include criticism of government officials or politicians. However, anti-extremism legislation continues to be used to as a means to suppress dissent in Russia.
18. While the clarification by the Supreme Court is welcomed, PEN International remains concerned that in practice the misuse of these laws continues, and amounts to attempts to deny Russian citizens their fundamental right to freedom of expression.

Internet Censorship

19. PEN International, along with other human rights organisations, is concerned about moves towards internet censorship introduced in July 2012. Although the legislative amendments are intended to protect children, targeting a blacklist of websites promoting child pornography, suicide and drugs, concerns have been raised that this will introduce a high level of government control. While a separate agency will oversee the blacklist, the new legislation also grants courts the power to add websites to the blacklist, which is alarming in a context in which opposition or religious groups are frequently labelled as extremist and could face additional censorship in this way. Print and television media are strongly controlled by the state, and increased regulation of the internet poses a severe threat to freedom of expression.
20. The amendments to internet legislation are due to enter into force November 2012, but authorities have already begun to enforce the legislation in spirit. In September 2012, Russia's Prosecutor General ordered Internet Service Providers in Chechnya to block access to YouTube entirely in the wake of the controversial film "Innocence of Muslims". The Prosecutor lacked a court order—and therefore acted illegally—yet the move demonstrates how ambiguity in the legislation may enable restrictions to be placed on any content or content provider.

Amendments to NGO Legislation

21. During the 2009 UPR the Russian Federation accepted recommendations to review laws on non-governmental organisations (NGOs) to ensure their compatibility with international human rights standards and obligations. Some positive steps were taken towards this in the form of amendments introduced in June 2009 under former President Medvedev. However,

these have recently been reversed.

22. Under a new series of amendments which were rushed through parliament and signed into law on 21 July 2012, NGOs that receive foreign funding and are politically engaged will be recognized as “foreign agents” and required to undergo a separate registration process with the Ministry of Justice. Consequently they will be subject to additional investigations and hefty reporting requirements, and failure to comply could lead to high fines or even prison sentences.
23. The term “foreign agents” has particularly negative connotations in post-Soviet Russia, and severely misrepresents the role of NGOs. Human rights organizations have criticized the bill for reinforcing state control over civil society in the country, discrediting advocacy and human rights groups, and threatening the work of independent election monitors in particular.
24. PEN International is concerned that this law severely restricts the ability of civil society to hold officials to account, and that when it comes into effect from November 2012 it will further limit the ability of journalists and activists to monitor and report on opposition politics. As such it threatens freedom of expression and the right of Russian citizens to information.

Threats to Freedom of Assembly

Use of Violence against Demonstrators

25. Despite commitments expressed by the Russian Federation during the 2009 UPR to take steps to promote freedom of assembly, this has failed to materialise and instead this fundamental right has been frequently violated.
26. 2011-2012 has seen an increase in public protest in Russia, which has unfortunately been accompanied by the use of force by authorities as they seek to disperse peaceful assemblies. This was particularly acute around the parliamentary elections in December 2011, presidential elections in March 2012, and the inauguration of President Putin in May 2012. Journalists and writers have been particularly targeted for attempting to report on such events.

Amended Law on Meetings, Rallies, Demonstrations, Processions and Pickets

27. Legislative changes have increasingly restricted the right to freedom of assembly. On 8 June 2012, the signing of amendments to the Federal Law on Meetings, Rallies, Demonstrations, Processions and Pickets, and the associated Code of Administrative Offenses, increased the penalties for violation of demonstration regulations. This included raising the maximum financial penalties for organising or participating in unauthorized peaceful protests to 300,000 rubles (£6000), and preventing those charged with administrative offenses from organising or leading future protests.
28. The restrictions on unauthorised protests are tantamount to requiring government permission (rather than advance notification) and as such are in violation of Article 21 of the ICCPR definition of freedom of assembly.
29. Moreover, the amendments were rushed through parliament and signed into law without giving due consideration to concerns raised by the Presidential Council for Civil Society and

Human Rights, that assists and advises the President in the practice of his constitutional responsibilities to guarantee and protect human rights. The introduction of these changes subsequently led to house searches of journalists and opposition leaders, and the arrest of activists traveling to the capital to participate in demonstrations.

30. This represents a failure to respond to recommendations accepted during the 2009 UPR to create a supportive legislative environment for freedom of expression and assembly, and PEN International is concerned that excessive sanctions restrict citizens' rights to publicly and peacefully exercise their fundamental freedoms.

Restrictions on LGBT Activists

31. The lesbian, gay, bisexual and transgender (LGBT) community continues to suffer from restrictions on freedom of assembly and expression in Russia. Following bans on LGBT pride parades in Moscow between 2006-2008, the European Court of Human Rights ruled in 2010 that this amounted to a violation of freedom of assembly. Despite this ruling, LGBT activists continue to face repressive action from the authorities, and in August 2012 the Moscow city council confirmed a century-long ban on gay pride events in the city.
32. In a series of regional bans introduced by city councils across the country in 2011-2012, "homosexual propaganda" that targets minors has become a punishable offense. In St Petersburg, over 70 activists were prosecuted under the new legislation in the first four months after it came into force, according to police figures released to the Russian media. However, a recent ruling of the Supreme Court released in September 2012 clarifies that this ban does not include providing general or neutral information, or prevent public protests or discussions related to gay rights.
33. While this clarification is welcome, the court did not overturn the regional legislation, which is now also being proposed at federal level. This is particularly concerning in view of the refusal by the Russian Federation during its response to the 2009 UPR to accept recommendations regarding non-discrimination of LGBT persons and denial of the existence of a policy of discrimination on grounds of sexual orientation.

PEN Recommends

PEN International makes the following recommendations:

- Enable journalists to report on protests unhindered; and implement measures to ensure full justice for all murdered writers and journalists;
- Decriminalise libel and bring legislation back into line with European norms for such offences;
- End the application of hooliganism and extremism laws as a means to suppress dissent; support the Supreme Court in its efforts to clarify definitions and educate Russia's prosecutors and judges about this;
- Allay concerns that there is collusion between the church and state to penalise critics of the church; and ensure that the draft legislation to criminalise blasphemy is not introduced;
- Review legislation aimed at internet regulation, further defining the target of such regulation, and ensure the provision of independent oversight of the process for blacklisting

web content;

- Rescind all legislation that curtails the capacity of advocacy groups to carry out their functions as promoters and defenders of civil and political rights; encourage conformity with the recommendations made by the Expert Council on NGO Law of the Council of Europe;
- Uphold rulings of the European Court of Human Rights to address restrictions to freedom of expression faced by LGBT activists; review new legislation to ensure that it does not penalise commentary on LGBT issues, and widely publicise the clarification of the Supreme Court.