

**ARTICLE 19****Submission to the UN Universal Periodic Review of Russian Federation  
16<sup>th</sup> Session, April – May 2013**

09 October 2012

**Executive Summary**

1. This analysis is submitted by ARTICLE 19: Global Campaign for Free Expression, an international human rights organisation that works to defend and promote freedom of expression and information. ARTICLE 19 was established in 1987 and has worked in the Russian Federation for over the last 10 years. Jointly with our Russian partners, we have published several reports on the RF including *The Cost of Reputation. Defamation Law and Practice in Russia* (November 2007) and *Covering Conflict: Reporting on Conflicts in the North Caucasus in the Russian Media* (May 2008). Our latest report focused specifically on impunity for the killings of journalists *No justice for journalists in Ukraine, Belarus and Russia* (September 2011). Currently, ARTICLE 19 is implementing a long-term project in the North Caucasus and other Russian regions focused on the protection of journalists.
2. Given the expertise and the scope of activities of ARTICLE 19, this submission focuses on the Russian Federation's compliance with its international human rights obligations in protecting the right to freedom of expression and the right to freedom of information. The Russian Federation is a party to the ICCPR, and ARTICLE 19 submitted a shadow report to the Human Rights Committee during its 2009 review. In its concluding observations the Committee expressed its concern at the alarming incidence of threats, violent assaults and murders of journalists and human rights defenders, which has created a climate of fear and a chilling effect on the media, including for those working in the North Caucasus, and decried the lack of effective measures taken to protect the right to life and security of these persons. Similar concerns had been outlined by ARTICLE 19 in its shadow report. Recommendations by the Human Rights Committee included amending the Criminal Code to reflect the principle that public figures should tolerate a greater degree of criticism than ordinary citizens and de-criminalise defamation and subject it only to civil lawsuits, capping any damages award.
3. During the first cycle of the UPR the Russian Federation endorsed the recommendations to, inter alia, conduct a thorough, prompt and impartial investigation on the assassinations of journalists and human rights defenders and bring the perpetrators to justice; promote the rights of human rights defenders to freedom of expression, association and assembly; and to review the extremism and NGO laws to ensure their compatibility with international human rights obligations and standards. It also accepted recommendations to create an environment through a legislative framework that promotes rather than restricts the right to freedom of assembly and that encourages citizens to express their diverse views as well as to improve conditions for proper functioning of independent media, in particular national TV channels, in order to provide more space for expressing diverse views and opinions.
4. However, the Russian government has fallen short of meeting its obligations and fulfilling the agreed recommendations as set out during the first UPR cycle. Of particular concern is the ongoing impunity for murders, attacks and threats against journalists and human rights defenders and the increasingly hostile approach Russian authorities have shown in its relationship with civil society at large, introducing harsh penalties for those in breach of legislation governing demonstrations and NGO activities. The major issues ARTICLE 19 would like to raise in this submission are:
  - the **failure to protect the life and physical integrity of journalists;**
  - the **failure to investigate cases of murders and assaults** concerning journalists

- the state interference with the right to freedom of expression by **the use of defamation**
  - misuse of **legislation** to suppress criticism against the Russian authorities;
  - the misuse of **incitement to religious hatred legislation** against artists and journalists
5. The issues described below constitute clear violations of the right to freedom of expression and access to information by the Russian government, ignoring its obligation to create an environment that encourages pluralism and political debate. Such an environment does not currently exist in Russia: whereas media, journalists, human rights defenders and opposition groups are silenced, the Russian public is deprived of its right to information and debate on matters of public importance. ARTICLE 19 encourages the Russian government to positively engage with the UPR, using this as an opportunity to improve its human rights credentials.

**The failure to protect the life and physical integrity of journalists**

6. Although it is difficult to establish an exact number of journalists killed in connection with their work, there is overwhelming evidence that this number is extremely high in the Russian Federation. By October 2012 the database held by the International Federation of Journalists for Russia listed 54 cases with a clear link between a journalist’s death and his or her work since 2000 (16 of whom had been directly targeted, 32 killed in alleged accidents, and seven deaths during crossfire and terrorist acts). In only one case have the perpetrators been prosecuted and brought to justice.
7. Reports suggest that the physical assaults of journalists, media workers and human rights defenders relating to their work are similarly high. Although there are no official statistics, the Glasnost Defence Foundation has independently recorded the number of reported assaults against journalists since 1998. They state that 263 journalists have been assaulted over the reviewed period from the beginning of 2009 until 1 October 2012. The number of journalists assaulted per year is as follows:

Year	Assaulted Journalists
2009	58
2010	58
2011	80
2012 (until 1 September)	67

**The failure to investigate cases of murders and assaults concerning journalists**

8. According to the UN Special Rapporteur on Freedom of Expression, Russia is considered one of the most dangerous countries in the world for journalists. In June 2010, he called on the Russian Federation amongst others to “adopt the measures necessary to guarantee the protection of journalists.” The reaction of the Russian government to his concerns was both disappointing. Its representative stated that although there are attacks against journalists in the Russian Federation, “in every case a careful investigation is undertaken and the guilty receive the punishment they deserve,” irrespective of whether these assaults are linked to their professional activities. This is clearly not an accurate description of the current situation.
9. On 15 October 2011 the founder of the independent weekly newspaper *Chernovik*, **Khadimurad Kamalov**, was shot dead in Makhachkala in the Republic of Dagestan. Khadimurad was a respected journalist and civil society activist, well-known for speaking out against human rights violations in the region. *Chernovik* is one of the only independent newspapers in the republic and reports on corruption and violations of human rights by law enforcement officials in the region. Khadimurad’s death followed years of threats as well as legal and police harassment against the newspaper and its staff, including Kamalov. The criminal investigation into his murder has been stalled.

10. The lack of political will to resolve the murders of journalists and human rights defenders shows even in two of the most well-known cases. On 7 October 2006, **Anna Politkovskaya**, investigative journalist at *Novaya Gazeta*, was murdered in Moscow. On 15 July 2009, prominent human rights activist **Natalya Estemirova** was abducted and killed in Grozny, Chechnya. At the time of their murders, both were working on sensitive cases of human rights violations in Chechnya. No one has been brought to justice for these murders, despite ongoing calls by national and international organizations for independent and transparent investigations.
11. Shortly after midnight on 5 April 2012, investigative journalist **Elena Milashina** and human rights defender **Ella Asoyan** were attacked while walking in the street by two men in the Moscow suburban neighbourhood of Balashikha. The assailants stole Milashina's wallet and Asoyan's laptop computer and one of them severely beat Milashina. The brutal force used specifically against Milashina while preventing Asoyan from defending her friend suggests the attack was a retaliatory act against Milashina's recent investigative work for *Novaya Gazeta*. Police did not arrive until more than an hour later and the criminal investigation is deliberately discounting the possibility that this was an attack linked to Milashina's professional activities and to date has not shown genuine interest in finding both the perpetrators and masterminds behind the attack.

#### **State interference with the right to freedom of expression by the use of defamation**

12. ARTICLE 19 maintains that in recent years, defamation remained one of the most serious constraints on freedom of expression in the Russian Federation. However, we note that the situation regarding defamation is a complex one. Media outlets' fear of defamation lawsuits severely restrains alternative critical voices. Self-censorship is practised at several levels: by the authors themselves, by editors, and by the owners or founders of media outlets. The few newspapers that dare to criticise often take significant pre-emptive measures to protect themselves. Some have already registered under a different name, so they can continue operating under an alternative brand if they are closed. For example, *Novaya Gazeta* has registered the name *Novaya Gazeta Plus 7*.
13. In July 2012, deputies in the Russian State Duma passed amendments that **make defamation a criminal offense** punishable by a fine of up to 5 million rubles (\$155,000) or up to five years in prison. The legislation was supported by the Federation Council and signed into law by President Vladimir Putin, only a few months after the then President Dmitry Medvedev had decriminalized defamation. Although criminal defamation is a part of the legal system in many countries, ARTICLE 19 notes that it has been increasingly viewed as an unjustifiable limitation on freedom of expression due to its chilling effect.
14. It is important to mention that the initial reform, under Medvedev, had not abolished Article 319 of the Criminal Code which **protects government officials from insult**. The special protection for public officials with respect to defamation and insult is in violation of international standards of freedom of expression according to which public officials, compared to ordinary citizens, should endure harsher criticism. In several cases against Russia, the European Court of Human Rights has found that domestic courts failed to apply this standard.
15. A specific example were the civil and criminal defamation proceedings against **Oleg Orlov, head of the Russian human rights organisation Memorial**. The cases against Oleg Orlov relate to remarks he made after the kidnapping and murder of Natalia Estemirova on 15 July 2009. Orlov stated that he believed that Chechen President Ramzan Kadyrov was morally responsible for the murder of Estemirova and for the overall deteriorating human rights situation in Chechnya. ARTICLE 19 is especially concerned that Orlov faced criminal charges after his civil trial – for the same alleged defamatory remarks about President Kadyrov – had already been settled. It was not until June 2011 that Orlov was acquitted of these charges.

#### **Misuse of legislation to suppress criticism against the Russian authorities**

16. Although the Russian Federation committed to amending its extremism and NGO legislation during the first cycle of the UPR, bringing them in line with international human rights standards, such reforms were not initiated and instead a backwards trend has developed, and become more visible since June 2012.

17. A new **Law on Meetings, Rallies, Demonstrations, Processions and Pickets** was signed into law on 9 June. Although an expert analysis of the draft law that was presented to President Putin on 7 June by the Presidential Council for Civil Society and Human Rights indicated serious flaws this was ignored. The new law provides for excessive administrative fines of up to RUB 300,000 (\$9,300) and includes vague terminology, such as ‘mass simultaneous stay or movement’, ostensibly in an attempt to incorporate new forms of protest, such as flash mobs or mass protest walks.
18. Amendments to Legislative Acts of the Russian Federation in Part Regulating Activities of **Non-commercial Organizations, which Carry Functions of Foreign Agents** were adopted on 21 July 2012 and will come into force in November 2012. The speed of its adoption and content sent shockwaves to civil society. The overbroad definition of political activities as included in the amendments will allow for arbitrary and selective use of the proposed legislation. The legislation introduces strict control over any activities by non-commercial organizations considered ‘foreign agents’, with additional audit and reporting requirements. If an organisation fails to comply its executive manager can be subject to a 300.000 RUR (EUR 7.300) fine or up to two years in prison.
19. In June 2012, the Moscow City Court upheld a district court decision to **ban gay pride** marches in the city for the next 100 years. Earlier, in March 2012, St Petersburg became the fourth Russian city to ban “homosexual propaganda”, a move that severely restricts the freedom of peaceful assembly and association for advocates for the lesbian, gay, bisexual and transgender community (LGBT).
20. Amendments to the Law on the Protection of Children from Information Detrimental to their Health and Development were also adopted in July 2012. These amendments introduce the possibility for **“illegal” websites to be blocked without due process** and on an arbitrary basis within 72 hours. They would have the possibility to appeal the decision of the Federal monitoring body, but only following the blockage of their IP-addresses; these amendments also allow for the blocking of IP-addresses and Internet domains, as opposed to merely individual URLs. This could result in the blacklisting of a large number of websites which have not displayed any detrimental information or illegal content under Russian law.
21. ARTICLE 19 remains concerned about the **lack of a clear definition of “extremist act”** in the Anti-Extremism Law, and the wide array of offences, such as “public justification of terrorism”, “mass distribution of knowingly extremist materials”, and “provision of information services to extremists.” In July 2006, an amendment to the Anti-Extremism Law added to the categories of extremist activities ‘defamation of public officials’ (“libellous accusations of extremism against public officials”). Such provisions effectively establish self-censorship as they may hold the media back from reporting on issues of public interest out of fear of being to be labelled as engaging in “extremism”. The commitment made following the first UPR cycle to review “extremism” legislation was not fulfilled.

#### **The misuse of incitement to religious hatred legislation against artists and journalists**

22. ARTICLE 19 is also concerned about assaults on artists and art works by extremist religious groups, the lack of protection against such acts and the arbitrary use of legislation prohibiting religious hatred against artists. Artists and curators who use religious symbols in their works have been attacked by groups of Orthodox believers in Russia.
23. On 12 July 2010, **two Russian art curators, Andrei Yerofeev and Yuri Samodurov**, who staged an exhibition titled Forbidden Art 2006 featuring censored Soviet and post-Soviet art works, were convicted by a Moscow court for "inciting hatred or enmity" and "denigration of human dignity.” The exhibit brought together a number of censored art works from well-known contemporary artists in Russia, and included a piece that depicted Mickey Mouse instead of Jesus Christ in paintings portraying scenes from the Bible. The prosecution claimed that Samodurov and Yerofeev had arranged the exhibition in such a way that it incited enmity and hatred and also denigrated the dignity of Christian groups, in particular Orthodox Christians.
24. On 17 August 2012, Khamovnichesky District Court in Moscow found three members of the feminist collective Pussy Riot Nadezhda Tolokonnikova, Maria Alekhina, and Yekaterina Samutsevich, of ‘hooliganism motivated by religious hatred’ and sentenced them to two years in a penal colony. On 21 February 2012, members of a collective known as Pussy Riot, entered the Cathedral of Christ the Saviour, a Russian orthodox church in Moscow. They bowed down on the

altar before they started singing a song praying to the Virgin Mary to drive Russia's President Putin away. Cathedral security guards ended the performance 40 seconds after it started.

25. In light of the above, ARTICLE 19 recommends that the Russian government makes necessary legislative changes, and adopts comprehensive policies and mechanisms to both prevent future violations and remedy past ones. In particular, we recommend the following:

- Take effective measures to prevent the killing, disappearances and attacks against journalists and media workers. When such acts do occur, carry out thorough and impartial investigations with a view to bringing the perpetrators to justice;
- Repeal provisions on defamation in the Criminal Code;
- Take appropriate measures to train judges on international standards on defamation and make sure that judges take into account the importance of freedom of expression and the potentially chilling effect of the award.
- Ensure that legislation with overly broad definitions, such as legislation governing protests, non-commercial organisations, internet and extremism is amended in line with international standards and take immediate steps to ensure that nobody is detained or harassed for the peaceful expression of ideas;
- Provide protection of artists against attacks by religious groups and ensure that legislation against hatred is applied without discrimination