

## Submission to the Special Rapporteur on the rights to freedom of peaceful assembly and of association

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Reporting organisations<sup>1</sup>:

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Eurasian Harm Reduction Association (EHRA) (<http://harmreductioneurasia.org>) is a non-profit public organization, uniting 303 organizational and individual members from 29 countries of the Central and Eastern Europe and Central Asia region (CEECA). EHRA's mission is to actively unite and support communities and civil societies to ensure the rights and freedoms, health, and well-being of people who use psychoactive substances in the CEECA region.

*Address: Verkių g. 34B, office 701 LT – 04111, Vilnius, Lithuania*



HIV Legal Network (<http://www.hivlegalnetwork.ca/>), formerly the Canadian HIV/AIDS Legal Network, promotes the human rights of people living with, at risk of or affected by HIV or AIDS, in Canada and internationally, through research and analysis, litigation and other advocacy, public education and community mobilization.

*Address: 1240 Bay Street, Suite 600, Toronto, Ontario, Canada, M5R2A7*



Human Rights Resource Center (Lithuania)



Andrey Rylkov Foundation for Health and Social Justice ([www.rylkov-fond.org](http://www.rylkov-fond.org)) is a grass-roots organization from Moscow, Russia with the mission to promote and develop humane drug policy based on tolerance, protection of health, dignity and human rights. The Foundation engages in 4 key strategies to advance its mission: advocacy, watchdog, service provision and capacity building of affected communities and individuals.

*Address: 17-82 Marshala Biryzova street, Moscow, Russia, 123060*



Independent charitable foundation Candle (<http://svechaspb.narod.ru>) provides HIV services for people living with HIV, people who use drugs and orphan kids, and supports their integration into society by providing comprehensive social, medical, psychological assistance based on a personality-oriented approach. Prevention of HIV infection and other socially significant diseases.

*Address: 197374, St. Petersburg, st. Savushkina, 115/3 - 136*



NGO “Phoenix PLUS” Socially-oriented autonomous non-profit organization working in HIV prevention with gay men and other men who have sex with men.

*Address: 302016, Oryol, Karachevsky lane, 25-44*

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## I. Introduction

The expected escalation of the Russian government's crackdown of civil society poses a fundamental challenge. The new amendments to the so-called Foreign Agents Law<sup>2</sup> (FA Law) have created new threats and vulnerabilities for civil society organisations (CSOs) as well as active citizens<sup>3</sup>. Since its introduction in 2012, this law has targeted independent Russian CSOs, including human rights organisations and those providing HIV and social support services. On December 30, 2020, the President of the Russian Federation signed the amendments to the FA Law which broadened its enforcement to include human rights defenders, journalists, and political activists in their personal capacity<sup>4</sup>. In the past eight years, the government has sanctioned approximately 180 CSOs under this law. The grounds for being recognised as a "foreign agent" have been extended. In addition to the previous two criteria (being involved in political activities while receiving money from abroad), they now include expressing opinions regarding state policies, if the Russian government deems these opinions to be in the interest of a foreign entity. Under the amended law, the individuals designated as "foreign agents" will face penalties of up to five years in prison for failing to register and report on their activities. The new amendments signal a renewed crackdown on independent Russian CSOs and politically active citizenry, likely causing a further shrinking of space for Russia's civil society and increased self-censorship. The government's attacks on civil society have already reverberated through the regions and have intensified fear of prosecution. Nowadays, four lists of «foreign agents» exist: 1) non-commercial organisations<sup>5</sup>; 2) the media<sup>6</sup>; 3) unregistered public organisations; and, 4) individuals.

While the social and economic situation for a vast majority of Russian citizens has been aggravated by the COVID-19 pandemic, the Russian government will likely use the new amendments to legitimise its further crackdown on civil society. The financial shortfall has already affected charities in Russia, and will have a broader effect on those small-sized CSOs who struggle to retain human resources. Access to resources for such smaller scale CSOs has also been affected by the enforcement of the Law on Undesirable Organisations<sup>7</sup>, which bars select foreign-based organisations from operating in Russia and criminalises cooperation between them and Russian CSOs. To-date, thirty international and foreign-based organisations have been added to the list of undesirable organisations<sup>8</sup>.

## II. Labelling of HIV-service CSOs as «foreign agents»

The definition of the term "foreign agent" is unclear. The general meaning of "agent" presupposes acting under the direction, or in the interests, of another person or entity, or a foreign sponsor, in this case. The Russian government has failed to present a single fact demonstrating that listed CSOs operate on the orders, or in the interests, of international foundations or foreign donors supporting their activities. In some cases, even funding from a Russian organisation has been considered as foreign funding (in the case of sub-recipients of originally multilateral funding).

In all cases whereby organisations have tried to challenge their inclusion onto the FA list, and questioned the political nature of their activities, the courts have turned down their arguments and defended the rightfulness of the Ministry of Justice decision to include them on the list. However, courts have recognised all activities as political, even if the presented activities were exclusions from the FA Law. As a result of the policies of the courts, CSOs cannot avoid being included in the "foreign agents" register when they have received foreign funding; this lack of clear definitions provides for its arbitrary application.

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<sup>2</sup> Federal law No. 121 of 20 July 2012, "On Amendments to Legislative Acts of the Russian Federation regarding the Regulation of the Activities of Non-profit Organisations Performing the Functions of a Foreign Agent".

<sup>3</sup> <https://www.amnesty.org/en/latest/news/2020/11/russia-new-foreign-agents-bill-further-erodes-freedom-of-expression-and-association/>

<sup>4</sup> <https://rg.ru/2021/01/11/bezopasnost-dok.html>

<sup>5</sup> <http://unro.minjust.ru/NKOForeignAgent.aspx>

<sup>6</sup> <https://minjust.gov.ru/ru/documents/7755/>

<sup>7</sup> Федеральный закон от 20 июля 2012 г. N 121-ФЗ "О внесении изменений в отдельные законодательные акты Российской Федерации в части регулирования деятельности некоммерческих организаций, выполняющих функции иностранного агента <https://rg.ru/2012/07/23/nko-dok.html>

<sup>8</sup> <https://minjust.gov.ru/ru/documents/7756/>

By letter, the Russian FA Law excludes CSOs working in the field of health care.<sup>9</sup> However, out of nine CSOs added to the list in 2020, four were HIV-service CSOs. In total, out of 75 CSOs registered as FAs by January 28, 2021, seven are HIV-service CSOs.<sup>10</sup>

Among the CSOs that have been prosecuted are the *Andrey Rylkov Foundation for Health and Social Justice* from Moscow; the Centre for Social and Information Initiatives “*Action*”; Charitable Fund “*Humanitarian Action*” and Charitable Foundation “*Candle*” from St. Petersburg; *Fenix+* from Oryol; and “*We Are Against AIDS*” from Krasnoyarsk. Advocacy of their respective supporters or Board members were identified as public activities and thereby political. One CSO has already closed, and two have initiated the closure procedure, which is also challenging due to additional barriers from the State.

Besides working in the field of HIV, these CSOs share one more important characteristic: they have previously received project funding from the Global Fund to Fight AIDS, Tuberculosis and Malaria (GF), which is a multilateral organisation of which Russia is a member. The GF recently approved a new three-year programme for Russia, all of the activities of which will be CSO-led; hence, there is a risk of a further escalation of FA Law enforcement, resulting in the eradication of civic and political activism outside of the government’s control.

The consequences of the enforcement of the FA law for these CSOs includes:

- The requirement to mention the FA status of the organisation on every publication and material, even if it is published by a CSO member or supporter, which increases **stigma**, especially in cases of HIV-service CSOs supporting LGBTQ+ people, people living with HIV (PLHIV), and people who inject drugs (PWID);
- **Fines**: for failure to voluntarily register on the FA list, from RUB300,000 to RUB500,000 (approx. USD4,000 - 6,500), which can be a substantial proportion of a CSO’s annual budget. The same fines can be applied for future non-compliance of the FA Law;
- Requirements for a **full financial audit** that increases the administrative costs by about RUB100,000 (appr. USD1,300) annually, from which CSOs are normally exempt;
- **Other financial burdens** related to seeking legal advice and related charges;
- **State control (check-ups)** can be performed each year instead of once every three years. The majority of the above-mentioned CSOs have successfully passed state check-ups two years ago, but in 2020 they were faced by unlawful and unscheduled state checks which found political activities even though activities have remained the same;
- Many CSOs will require **voluntary liquidation** to avoid the accumulation of fines and legal representation in several proceedings simultaneously. In case of FA status, CSOs face additional barriers in liquidating; and,
- FA CSO leaders are excluded from any councils operating under government ministries and departments, and representatives of state bodies are prohibited from participation in FA CSO programmatic or advisory boards. Thus, **any cooperation between an HIV-service CSO recognised as FA and authorities becomes impossible** by virtue of the law.

These attacks on HIV-service CSOs, mainly community-led CSOs, come at a time when instead of discouragement, the government should support all community-led efforts to curb the HIV epidemic. Russia is a high HIV burden country and home to the fastest growing HIV epidemic in Europe, with over 1,000,000 PLHIV and over 370,000 deaths among PLHIV<sup>11</sup>. There is an urgent need to scale-up HIV prevention, testing and treatment services and CSO involvement<sup>12</sup>. Russia has one of largest PWID populations in the world; it is banning opioid substitution treatment services and is not providing domestic

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<sup>9</sup> Article 2, paragraph 6, of FA law: “Political activity does not include activities in the field of science, culture, art, health care, prevention and protection of the health of citizens, social support and protection of citizens, protection of motherhood and childhood, social support for disabled people, promotion of a healthy lifestyle, physical culture and sports, protection of plant and wildlife, charitable activities, as well as activities in the field of promoting charity and volunteering” <http://www.consultant.ru/cons/cgi/online.cgi?req=doc&base=LAW&n=198862&fld=134&dst=100012&rnd=214990.653339439526806&#09290550260768654>

<sup>10</sup> <http://unro.minjust.ru/NKOForeignAgent.aspx>

<sup>11</sup> Федеральный научно-методический центр по профилактике и борьбе со СПИДом ФБУН Центрального НИИ эпидемиологии Роспотребнадзора, 2020 <http://www.hivrussia.info/na-sajte-razmeshhena-spravka-vich-infektsiya-v-rossijskoj-federatsii-na-30-iyunya-2020-g/>

<sup>12</sup> UNAIDS 2019 Health, Rights and Drugs [https://www.unaids.org/en/resources/documents/2019/JC2954\\_UNAIDS\\_drugs\\_report\\_2019](https://www.unaids.org/en/resources/documents/2019/JC2954_UNAIDS_drugs_report_2019)

funding for other harm reduction services, which has led to extremely high rates of HIV among PWID (UNAIDS, 2019)<sup>13</sup>. Similarly, Russia does not provide sufficient (and, on the country scale, almost any) domestic funding for HIV prevention services for gay men and other men who have sex with men, sex workers, and transgender people that are key to the HIV epidemic. To address this funding gap for HIV services, the funding for them has mainly come from international donors, such as the GF.

It should be noted that the Russian Federation has an international commitment under 70/266 Political Declaration on HIV and AIDS, which sets the target of 90% coverage of the above-mentioned key populations with HIV prevention services, and a target that 30% of HIV services should be community-led<sup>14</sup>.

The FA law demotivates CSOs to continue the provision of life-saving health services and to apply for international or multilateral funding. A “Foreign Agent” label also has a negative value in stigmatising HIV prevention and community-led CSOs, as if they are acting not in the interest of communities and public health but in the interests of foreign states.

It has been impossible to successfully appeal the Ministry of Justice decision to include CSOs in the FA list.<sup>15</sup> CSOs can achieve legal relief only upon future application to the ECHR.

A rare success story in this area is limited to one Russian CSO, which is not working in the HIV field. In 2020, the Dagestan-based organisation, “Mother and Child”, was charged with violation of the FA Law. This CSO works to raise health literacy among socially vulnerable young and rural women and provides medical assistance for childbirth-related issues in remote mountainous areas of Dagestan. The judge ruled in favour of the defendant due to the lack of evidence.

### **III. Participation in associations**

The registration of non-profit organisations remains a complex process in Russia and is discriminatory in comparison with the registration of commercial entities organised on the basis of a “one-stop shop” principle. The registration period for non-commercial organisations, depending on its legal form, takes from 14 up to 30 working days, while the registration of commercial organisations takes only five working days. Despite the imperfection of the legislation governing the registration of non-profit organisations, there is still a subjective factor - an employee of the Ministry of Justice independently determines what types of activities this, or that, organisation can carry out. At the same time, it is worth noting that the founders - citizens of Russia - now have the opportunity to register non-profit organisations online, using an electronic digital signature, which is not free to issue; in this case, however, the applicant is exempted from paying the state and notary fees.

If representatives of HIV FA NGOs decide to open a new NGO, such organisations may be recognised as FA, even if it does not have any funds at all, and the leaders can be held administratively, and even criminally, responsible for non-compliance with the FA Law.

Participation in the activities of international organisations can be difficult due to the existing Federal Law “On Controlled Foreign Companies”<sup>16</sup>, according to which a Russian citizen is obliged to disclose her/his participation, if s/he can directly or indirectly influence financial decisions of a foreign organisation, including non-profits in some cases, as well as non-registered associations. The participation of a Russian citizen in any bodies or councils of foreign organisations is a definitive confirmation of the need to submit a declaration of participation in the activities of a foreign organisation.

### **IV. Recommendations**

We respectfully ask the Special Rapporteur to advocate for an efficient and progressive legal and policy environment for CSOs in Russia, including, but not limited to, HIV-service CSOs.

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<sup>13</sup> UNAIDS 2020 Global AIDS Update <https://www.unaids.org/en/resources/documents/2020/global-aids-report>

<sup>14</sup> 70/266.Political Declaration on HIV and AIDS: On the Fast Track to Accelerating the Fight against HIV and to Ending the AIDS Epidemic by 2030. Resolution adopted by the General Assembly on 8 June 2016

<sup>15</sup> AGENTS OF THE PEOPLE FOUR YEARS OF “FOREIGN AGENTS” LAW IN RUSSIA: CONSEQUENCES FOR THE SOCIETY Amnesty International <https://www.amnesty.org/download/Documents/EUR4651472016ENGLISH.PDF>

<sup>16</sup> [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_19671/931ca597aa733d13326e3422e129e60a26a42b26/](http://www.consultant.ru/document/cons_doc_LAW_19671/931ca597aa733d13326e3422e129e60a26a42b26/)

The Government of the Russian Federation should limit the application of FA laws only to persons/organisations that meet the following criteria:

- they are under the direct control of a foreign government, or an agent of a foreign government; and,
- operate by taking orders, or acting upon requests or under the direction, of a foreign government or agents of a foreign government.

These laws should warrant a narrow interpretation to exclude activities that are, in any way, predominantly advancing science, public health, human rights, art, or culture.

The government should bear the onus of proving the above mentioned criteria without discrimination of any kind and with due respect to the right to freedom of association and the right to freedom of expression. In all such cases, a representative of a foreign government, in whose interest an alleged foreign agent is presumed to be acting, should have standing in a fair trial.

The OHCHR should take a leading role to conduct a global comparative study, and to make international recommendations, to help countries to apply foreign agent laws according to international human rights standards.

In the foreseeable future, the need for legal assistance, to CSOs and now to individuals, is likely to increase as the Russian government seeks to curb exercise of fundamental freedoms and civil liberties guaranteed by the Constitution through deliberate and increased targeting of politically active citizenry.

It is crucial to continue boosting the legal capacity of Russia's CSOs and citizen groups to strengthen institutional capacity by equipping them with information, training and legal assistance to improve their resilience against government attacks. Furthermore, there is a need to engage more lawyers in strategic litigation related to cases of FA.

Legal support for CSOs should include legal counseling; assistance in preparing mandatory reports to the state authorities; education of lawyers and activists in non-profit legal standards; conducting due diligence for CSOs to ensure their compliance with tax and other relevant legislation; and legal support to CSOs in judicial proceedings, including cases of strategic litigation.