

## Joint written submission to the Conservative Party Human Rights Commission's Inquiry into Human Rights In Russia

by  
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11 April 2018

The situation for freedom of expression and related rights in Russia has seriously deteriorated in recent years, with a notable acceleration after the annexation of Crimea in 2014. The Russian government has enacted numerous highly restrictive laws and policies that are used to target political opposition and civil society and have a broader chilling effect on freedom of expression within the country.

Independent media operates under hugely restrictive conditions and the government has sought to limit internet freedom, including the right to digital privacy. The Russian government has implemented expansive website blocking measures since 2012 and sought to enhance already extensive surveillance capabilities. This has affected independent media, civil society, opposition figures as well as ordinary Internet users.

This submission addresses the situation for the right to freedom of expression and information, and associated rights, focusing on the following issues:

1. Legal framework undermining freedom of expression online and offline
2. Digital developments affecting freedom of expression and access to information online
3. Media freedom and safety of journalists
4. Restrictions to freedom of association and to peaceful assembly
5. Discrimination on the grounds of sexual orientation and gender identity
6. Freedom of expression in Occupied Crimea.

### **1. LEGAL FRAMEWORK UNDERMINING FREEDOM OF EXPRESSION ONLINE AND OFFLINE**

Since 2013, numerous new laws have tightened an already highly restrictive legislative framework for freedom of expression, and have been widely applied to censor legitimate expression. In particular:

- In July 2016, the so-called “Yarovaya Package” – amending 21 existing laws – tightened pre-existing and introduced new, vague restrictions on expression justified under “countering extremism”. **These laws are open to arbitrary application, severely undermining the rights to FoE, privacy and freedom of religion or belief.**
- Numerous **vaguely worded provisions in the Criminal Code**, which do not comply with Article 19(3) of the ICCPR, **are routinely applied against dissenting voices**, in particular online. Half of these have been introduced since 2013.
  - Convictions for **public “extremist” expression** (under Articles 280, 280.1, 282, 205.2 and 354.1) have steadily increased since 2010; in 2017 about 95% of these convictions concerned online expression, with sentences varying from prison terms, suspended sentences and fines.
  - Convictions simply for **criticising the government’s actions**, (including under Articles 280 and 280.1) particularly regarding Russian activity in Ukraine, are concerning (e.g. Darya Polyudova, 2015).
  - Provisions prohibiting **‘insulting religious feelings’** (parts 1 and 2, Article 148 of the Criminal Code), have been applied at least 17 times since 2013, securing at least 15 convictions, with punishments ranging from fines to suspended sentences (e.g. Sergei Lazarov, 2016).
  - Provisions relating to **libel** (Article 128.1), **slander against a judge or prosecutor** (Article 298.1) and **insulting the authorities** (Article 319) remain in the Criminal Code and cast a chilling effect on FoE.
- Federal Law 114-FZ “On Combating Extremist Activities” mandates the Ministry of Information to maintain a list of **“extremist materials”**, labelled as such by a court order, whose circulation is prohibited under threat of administrative sanctions. As of April 2018, the list contained about **4,400** materials, many of which would not pass the threshold of incitement, under Article 20(2) of the ICCPR.

<sup>1</sup> This joint written submission was researched and prepared by ARTICLE 19 ([article19.org](http://article19.org)), SOVA Center ([sova-center.ru](http://sova-center.ru)) and the Mass Media Defence Centre ([mmdc.ru](http://mmdc.ru)). It is drawn from a joint NGO submission on Russia in October 2017 to the United Nations’ Universal Periodic Review (accessible at – <https://www.article19.org/wp-content/uploads/2017/10/Russia-3rd-UPR-Updated-Submission-090418-FINAL.pdf>) and updated to April 2018, utilizing the resources of OVD-Info ([ovdinfo.org](http://ovdinfo.org)), Human Rights Watch ([hrw.org](http://hrw.org)), Roskomsvoboda.org, and other Russian and international NGOs, mass-media, and Consultant.ru.

## **2. DIGITAL DEVELOPMENTS AFFECTING FREEDOM OF EXPRESSION AND ACCESS TO INFORMATION**

Since 2012, the authorities have significantly **expanded their powers to block websites without judicial oversight**, increasing the number of agencies authorised to block content, and the permitted grounds for blocking. A 'blacklist' of online content is administered by the government regulatory agency Roskomnadzor, and all Internet service providers (ISPs) based in Russia are required to immediately block content added to the blacklist.

Roskomnadzor is also responsible for **blocking content included in an official list of 'extremist materials'** maintained by the Ministry of Justice. Though a court order is required, **there is no requirement that website owners are notified of cases brought by regional prosecutors**, preventing them from challenging decisions. All cases have therefore found in favour of the State.

**A lack of transparency on the blocking process enables arbitrary blocking:** neither the General Prosecutor nor Roskomnadzor are required to justify blocking decisions, except in cases concerning 'extremist materials', which requires only the relevant article of Federal Law 114-FZ to be cited.

In 2017, Federal Law 327-FZ made amendments to the 'Lugovoi Law' (Federal Law FZ-398, 2014) that gave the General Prosecutor or his/her Deputies a right to block access to any online resource of a foreign or international NGOs designated 'undesirable'; and, to 'information providing methods to access' the resources enumerated in the 'Lugovoi Law', i.e. including hyper-links to old announcements on public rallies not approved by local authorities.

As of September 2017, **over 80 thousand sites and more than 4 million pages remain blocked**, including:

- **Grani.ru** and **Eg.ru** (online newspapers) and **Kasparov.ru** (the website of opposition politician Gary Kasparov), blocked since 2014 on the order of the Prosecutor General who alleged their coverage of mass protests in Moscow's Bolotnaya Square in May 2012 and criticism of Russian actions in Crimea contained "calls for mass disorders, extremist activities, participation in unauthorised mass gatherings".
- **Deti-404**, an online support and advice community for LGBT youth, was blocked for "promoting homosexuality" among minors in January 2015.

Roskomnadzor blocks content using IP addresses, rather than specific URLs, which results in '**collateral blocking**': restricting access to websites that share the same IP. In March 2018, **Roskomnadzor ordered ISPs to block more than 13 million IP addresses**, with the apparent aim to prevent access to Zello, an online radio app used by Russian long-haul truckers in 2017 to coordinate protests against increases to road tax.

Two other laws regarding restrictions to access to information online are also of concern:

- In January 2017 Federal Law 208-FZ, required news aggregators (including search engines) with more than one million daily users **to check the 'truthfulness' of 'publicly important' information before dissemination**. Non-compliance attracts harsh financial penalties, and is likely to **encourage prior censorship**: there is already evidence that aggregators are excluding information from civil society websites.
- Russia's so-called "right to be forgotten" law, which entered into force in January 2016, enables Russian citizens to request de-listing of links about them that violate Russian law, are inaccurate, out of date, or irrelevant. The legislation fails to establish exceptions in cases where the information at issue is in the public interest and/or concerns public figures and has been **used by public officials to remove content addressing their misconduct and/or corruption**.

### **SURVEILLANCE AND THE RIGHT TO PRIVACY**

Online anonymity and encryption are vital to protecting free expression in Russia, as the risks of speaking out online and offline grow, but are increasingly under threat from state surveillance and new restrictive legislation. Since the late 1990s, ISPs have been required to install a "System for Operational Investigative Measures" (SORM), directing all internet traffic to an FSB terminal, which enables state surveillance of all online activity, including private communications. Non-compliance attracts heavy fines or revocation of licenses. Though monitoring private communications requires a court order, the risk of abuse is high: FSB officers have direct access to this information through local control centres, and are not required to show a court order to ISPs. SORM has been used to target political opponents. Since 2013, Russia has significantly **strengthened its surveillance powers**, in particular:

- Federal Law 242-FZ on "**Data Localisation**" (2015), requires the personal data of Russian citizens to be stored on servers located within the territory of the Federation, enabling its security services access to sensitive data on Russian internet users, including activists, political opposition and journalists. While Google, Facebook and Twitter have not yet complied with the legislation, the blocking of LinkedIn since November 2016 demonstrates the consequences of non-compliance.
- In June 2017, the FSB requested the messaging service Telegram's decryption keys to decode messages sent over its network. When Telegram did not comply, explaining it was impossible due to technological reasons, the company was fined 800,000 rubles (\$14,000) by a Russian court. In March 2018, the Russian Supreme Court rejected Telegram's appeal and the service faces the possibility of being completely blocked by Roskomnadzor. Appeals has been filed before the ECtHR on behalf of Telegram, and on behalf of two Russian journalists that appealed against the FSB's requests as a violation of their ability to protect their sources.

Various measures to **restrict online anonymity** have also been introduced:

- Federal Law 241-FZ (2018) **bans anonymity for users of online messaging applications**, by requiring users to be identified through their phone numbers.
- Federal Law 276-FZ (2017), **bans Virtual Private Networks and Internet anonymisers from providing access to websites blocked in Russia**, and enables Roskomnadzor to block any site explaining how to use these services.
- Individuals administering such services have also been subject to judicial harassment. In April 2017, **Dmitry Bogatov**, a volunteer administrator of the Tor network, was charged with “preparing to organise mass disorder” (Article 212 together with Article 30 of the Criminal Code), and “incitement to terrorism” (Article 205.2), in relation to two online posts calling for arson and civil disobedience during an upcoming protest. Bogatov was released under a restricted residence order in January 2018 after no digital evidence was found of his involvement, but the charges remain.

### **3. MEDIA FREEDOM AND SAFETY OF JOURNALISTS**

Media freedom remains a key issue in Russia with the majority of Russian media outlets under direct or indirect state control. The limited number of remaining independent media broadcast online or target minority audiences, whilst others have moved abroad, been forced to close or change ownership and/or editorial position, including:

- **TV2**, an independent regional broadcaster ceased broadcasting on terrestrial channels in January 2015, after its license was terminated, continuing its work online
- **RBK**, a media outlet known for investigative reporting into corruption by Putin’s close associates, was sold to energy oligarch Grigory Berezkin in June 2017. It had been subject to state pressure throughout 2016, including police raids and fraud probes, an excessive civil lawsuit from a state-owned company for “reputational damage” and the firing of three of RBK’s top editors, allegedly due to state pressure.

The authorities have sought to **limit foreign ownership of media outlets and stigmatise foreign media** operating in Russia:

- Federal Law 239-FZ (2016) restricts foreign ownership of media outlets to 20%
- Since November 2017, as part abovementioned Federal Law 327-FZ, foreign media outlets have been may be listed as “foreign agents.” Around a dozen outlets are now designated ‘foreign agents’ – including Voice of America and Radio Free Europe.

Journalists and media outlets have been subject to judicial harassment and imprisoned on politically motivated charges, with investigations marked by serious procedural flaws and insufficient evidence. Even where charges are dropped, or prosecutions unsuccessful, these provisions have a chilling effect on free expression. In particular:

- Chechen journalist **Zhalaudi Geriev**, sentenced to 3 years’ imprisonment on charges of drug possession on 5 September 2016, has alleged he was abducted by armed men, subject to torture and ill treatment and forced to sign a confession. His reporting had covered corruption and other abuses by the Chechen authorities.
- **Prima Media**, a media holding based on Sakhalin Island, faced two years of legal harassment after a Senator brought libel charges against them. Although the case was eventually dropped, their offices were raided, and equipment and data seized.

The government has also failed to respond to violence against journalists, and are themselves sometimes the perpetrators of attacks, which include murders, physical attacks and threats, creating a climate of impunity that encourages further attacks. Since 1992, 58 journalists have been murdered, with total or partial impunity in 33 of those cases. Three journalists have been killed since 2013:

- **Dmitry Popkov**, editor-in-chief of Ton-M in Minusinsk, in May 2017
- **Nikolai Andrushchenko**, co-founder of independent newspaper Novy Peterburg, on 19 April 2017;
- **Akhmednabi Akhmednabiyev**, deputy-editor of Novoye Delo in Dagestan, in July 2013.

### **4. RESTRICTIONS TO FREEDOM OF ASSOCIATION AND ASSEMBLY**

The operating environment for non-governmental organisations (NGOs) has become very restrictive since the introduction in 2013 of the “**The Foreign Agents Law**”, which requires all Russian NGOs receiving foreign funding and engaged in loosely defined “political activities” to:

- Register as “foreign agents”, a term understood to mean ‘traitor’ or ‘spy’;
- Indicate their status in their publications, which diminishes their credibility;
- Comply with onerous reporting requirements, inspection orders, and restrictions on their activities.

Criminal and administrative sanctions for non-compliance includes, *inter alia*, fines of up to 500,000 roubles (\$8,800) or imprisonment of up to two years. As of 08 April 2018, **78 organisations were formally listed as “foreign agents”**, approximately **30 NGOs have closed**, and many have faced heavy fines and costly litigation. In May 2017 Human rights NGO Agora and election watchdog, Golos, were liquidated for violating the legislation. In June 2016, individual criminal charges were brought against **Valentina Cherevatenko**, head of ‘Women of the Don’, a human rights and peace-building organisation, for violating the legislation. The case was dropped in June 2017.

In May 2015, **Federal Law No. 129-FZ introduced the concept of ‘undesirable organisations’**, allowing any foreign or international NGO to be banned from operating in Russia, and introducing administrative and criminal sanctions of up to six years imprisonment against Russian citizens for their involvement with ‘undesirable organisations’. The legislation severely restricts Russian citizens and entities’ ability to associate with foreign partners, and threatens their financial sustainability; its vague terminology allows its arbitrary application, providing **another tool by which to harass civil society**.

- As of 08 April 2018, **14** entities are listed as “undesirable organisations”, primarily US-based granting organisations and some European NGOs.

**NGOs and human rights defenders have been subject to legal attacks and smear campaigns**, including:

- **Joint Mobile Group (JMG)**, a human rights monitoring organisation that documents violations in Chechnya, was subject to repeated attacks during 2014-6.
- In January 2018, **Oyub Titiev**, the head of the department of the Memorial Human Rights Centre in Chechnya, was charged with drug possession; it is suspected that the drugs were planted, and the case fabricated. Titiev’s detention has been extended until 9 May 2018.

Since 2012, legislation on public assemblies has been repeatedly amended, **severely restricting the right to peaceful assembly**. In particular:

- Amendments in June 2012:
  - Prohibit individuals who have twice been found guilty of violating the law on public assemblies from organising public events;
  - Prohibit “mass movements of people” and “public gatherings” even if they “bear no signs of a public event”; and
  - Grant the authorities’ broad discretion to refuse authorisation for protests entirely, or relocate them to remote areas, rendering them meaningless.
- Amendments in July 2014 increased sanctions for violating legislation on assemblies:
  - Fines for violating provisions on organising public events were increased to a maximum of 300,000 roubles (US\$9,000) for individuals, and 1 million roubles (US\$30,000) for legal entities.
  - Repeat violations (defined as more than three times in 180 days) was made punishable by prison sentences of up to five years, through the introduction of Article 212.1 to the Criminal Code. This provision has been applied at least four times (e.g. **Ildar Dadin**)

**Non-compliant assemblies are harshly repressed, including through mass arrests and the excessive use of force**. For example, when an estimated 88,000 and 184,000 participants took part in unauthorised mass anti-corruption protests on 26 March 2017 and 12 June 2017 in 154 cities across Russia, many organisers were denied permission to hold rallies in central locations. During the March protests, in Moscow alone:

- 1,043 people were temporarily detained; of these, 138 were found to have committed administrative offences; 64 were sentenced to administrative detention of 2 to 25 days, others received fines.
- Criminal cases were opened against some protesters on charges of attacking police officers, based on reportedly falsified evidence.
- Students alleged being excluded from university due to participation in the protests.
- 106 violations by police in more than 46 police stations during detentions were documented, including refusing access to lawyers, holding individuals without charge for longer than the proscribed period, failing to provide adequate food and drink, withholding medical care and threatening and verbally abusing detainees.

## **5. DISCRIMINATION ON THE GROUNDS OF SEXUAL ORIENTATION AND GENDER IDENTITY**

The 2013 amendments to Federal Law 135-FZ on protecting minors which banned the ‘promotion of non-traditional sexual relations to minors’ attempts to censor and stigmatise LGBTI people and prevents the free flow of information in Russia, including on critically important topics such as healthcare and education. To date, **6 people have been found guilty** under its provisions, including **Sergey Alekseenko** in 2016 and **Evdokia Romanova**, in September 2017.

The authorities **frequently refuse authorisation of public assemblies organised by LGBTI groups**, in violation of the rights to freedom of expression, assembly and association, and equality and non-discrimination:

- Moscow Pride has been banned every year since 2006;
- In St Petersburg, an assembly application for International Day Against Homophobia was dismissed in May 2016; and
- In the Arctic Circle, a planned ‘Polar Pride’ was banned in January 2017.

**Activists continue to demonstrate, and are regularly detained**. Most recently, on 1 May 2017 several activists were detained in St. Petersburg for raising a rainbow flag during a May Day procession.



## **6.FREEDOM OF EXPRESSION IN OCCUPIED CRIMEA**

Following the annexation of Crimea by the Russian Federation in March 2014, Russian authorities and the *de facto* Crimean authorities have **pursued a crackdown on independent media, opposition politicians and activists, particularly targeting Crimean Tatars.**

- 43 people expressing dissent have been forcibly disappeared since the annexation; 6 have since been found dead, and the whereabouts of 17 remains unknown. None of these disappearances have been effectively investigated or successfully prosecuted.
- In April 2016, **the Supreme Court of Crimea banned the Mejlis**, a Crimean Tatar elected representative body, labelling it an “extremist organisation”. Members of the Mejlis have been subject to violence, assault and threats: many are now in exile.
- Crimean Tatars have been arrested for peacefully protesting occupation.
- Ukrainians criticising Russia have been subject to unduly harsh law enforcement:
  - On 25 August 2015, following an unfair trial marred by serious allegations of torture, film director **Oleg Sentsov** and ecological activist **Aleksandr Kolchenko** were sentenced to 20 and 10 years’ imprisonment respectively on terror charges. The trial is widely perceived to be politically motivated.
  - On 22 September 2017, a Crimean Court sentenced **Mykola Semena**, a RFE journalist, to a 30 month suspended sentence for calls to violate the territorial integrity of the Russian Federation.

Following the annexation, **media outlets operating in Crimea were required to re-register under Russian regulations.** Very few (232 out of over 3,000) were given permission to continue operating and Ukrainian channels that previously broadcast in Crimea were blocked. Due to a change in radio frequency in February 2015, **7 radio stations were closed.** According to Ministry of Information Policy of Ukraine, **60 Ukraine online media outlets are currently blocked in Crimea.**

## **RECOMMENDATIONS**

We urge the UK Government to use all bilateral opportunities, and as a member of the United Nations Human Rights Council and of the Council of Europe, to encourage the Russian Federation to take the following steps to ensure the protection of freedom of expression and associated rights:

### **LEGAL FRAMEWORK UNDERMINING FREEDOM OF EXPRESSION ONLINE AND OFFLINE**

1. Amend legislation aimed at countering violent extremism, to ensure that complies with international standards on freedom of expression:
  - Amend vaguely-termed provisions, including ‘extremist activity’, ‘ideology of terrorism’, ‘label against USSR policy in WW2’, ‘degrading human dignity’ on various basis, and ‘calls aimed at violating the territorial integrity of the Russian Federation’, and replace with language in line with international law, prohibiting only actual incitement to violent acts.
  - Repeal provisions introduced by the “Yarovaya package” requiring communications providers to store Internet users’ data and grant access to security services without a court order.
2. Repeal Article 148 parts 1 and 2 of the Criminal Code on ‘insulting religious feelings’.
3. Decriminalise defamation, by repealing Articles 128.1, 298.1 and 319 of the Criminal Code.
4. Amend the Right to be Forgotten Law to ensure that information already in the public domain is not removed unless this is strictly necessary to avoid harm, and to safeguard against the removal of information in the public interest.

### **DIGITAL DEVELOPMENTS AFFECTING FREEDOM OF EXPRESSION AND ACCESS TO INFORMATION**

5. Guarantee internet users’ right to publish and browse anonymously and ensure that any restrictions to online anonymity are subject to a court order, fully comply with Article 19(3) of the ICCPR:
  - Reform the SORM Programme to ensure that security services do not have direct access to communications data;
  - Repeal provisions in the Yarovaya package requiring ISPs to store telecommunications data for up to six months and imposing mandatory cryptographic backdoors, and the 2015 Data Localisation law, which grant security service easy access to users’ data without sufficient safeguards. Desist from requiring messaging services, such as Telegram, to provide decryption keys in order to access users private communications.
  - Repeal Federal Laws № 241-FZ and № 276-FZ, which ban anonymity for users of online messaging applications prohibit Virtual Private Networks and Internet anonymisers from providing access to websites banned in Russia respectively.
6. Ensure the free flow of information along and reform legislation and practice to prevent arbitrary and/or politically-motivated blocking of websites, including by:
  - Amending Federal Law 149-FZ on Information, IT Technologies and Protection of Information so that the process of blocking websites meets international standards: any website blocking should be undertaken by an independent court and be limited by requirements of necessity and proportionality. No system can ensure that legitimate content is not wrongfully restricted and as has already happened in Russia, legitimate sites may be blocked because they use the same IP address as “unlawful” sites.

- Repealing Federal Law 208-FZ requiring search engines to check the truthfulness of public information, and refraining from introducing new legislation imposing liability on search engines for third party content.
  - Repealing Federal Law 327-FZ enabling the General Prosecutor or his/her Deputies to block, without a court order, access to any online resources of a foreign or international non-governmental organisation labeled as 'undesirable', 'information providing methods to access' any resources banned under the "Lugovoi Law", including hyper-links to sites with announcements about unapproved rallies.
7. Cease politically motivated prosecutions of Internet users, including those supposedly "justified" on the grounds of preventing extremism, separatism and offending religious believers, and those administering anonymising services. Immediately and unconditionally release those currently imprisoned on such charges.

#### **MEDIA FREEDOM AND SAFETY OF JOURNALISTS**

8. Guarantee media freedom by refraining from stigmatising independent media outlets through terms such as 'foreign agent' and amending legislation to ensure that it complies with Article 19 of the ICCPR, which states everyone has a right 'to seek, receive and impart information and ideas through any media and regardless of frontiers.' In particular by:
- Repealing Federal Law 239-FZ, restricting foreign ownership of media outlets to 20%.
  - Repealing the "Foreign Agents Law", including the 2017 amendments extending this law to foreign media outlets) and refraining from adopting new legislation that is unnecessary for state and public security.
9. Prevent and protect against threats and violence against journalists, media workers, human rights defenders and activists, and end impunity for such crimes, including by:
- Ensuring impartial, prompt, thorough, independent and effective investigations into all alleged crimes and holding those responsible to account.
  - Public authorities should publicly, unequivocally and systematically condemn all violence and attacks against all journalists and other media workers, as well as against activists;
  - Dedicate the resources necessary to investigate and prosecute attacks. Particular attention should be paid to investigating past murders.
10. Immediately and unconditionally release all journalists held on politically motivated charges as a result of their work. Refrain from further politically motivated prosecutions.

#### **RESTRICTIONS TO FREEDOM OF ASSOCIATION AND ASSEMBLY**

11. Ensure that NGOs can exercise their rights to freedom of expression and association, by repealing Laws on 'Foreign Agents' and 'Undesirable Organisations'.
12. Ensure protection of the rights to freedom of expression, freedom of peaceful assembly and association is applied during all protests, including by refraining from detaining individuals for peaceful protest and amending protest-related legislation to bring it in line with international standards.

#### **DISCRIMINATION ON THE GROUNDS OF SEXUAL ORIENTATION AND GENDER IDENTITY**

13. Repeal the 2013 Law on 'homosexual propaganda'. Ensure that LGBTI people can exercise their rights to freedom of expression, association and assembly without discrimination.

#### **FREEDOM OF EXPRESSION IN OCCUPIED CRIMEA**

14. Cease all actions that target activists, political opposition, journalists and others detained for criticising the Russian annexation of Crimea or expressing support for Crimean Tatars. Immediately and unconditionally release those detained and ensure that all disappearances of activists and others are effectively investigated.
15. Reverse measures to close media outlets operating in Crimea since the annexation, and ensure that journalists can operate freely on the Peninsula, even when expressing views critical of the authorities.