

# Contextual and Legislative Analysis of the Russian Law on NGOs

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## Summary

In November 2005, Russia came out with controversial draft legislation providing strict measures to control NGOs through a registration body at the Ministry of Justice. The draft called for the imposition of tighter registration requirements for NGOs, notification procedures for informal groups, strict monitoring of organizations, banning of subsidiaries of international NGOs, and limitations on the participation of foreigners and stateless persons in NGOs.

After vocal criticism from the civil society sector and foreign governments, some controversial measures, such as the banning of subsidiaries of international NGOs and the required notification for informal groups were dropped. Nonetheless, the final adopted piece of legislation remains problematic, granting wide discretionary powers to public officials implementing the law to investigate NGOs, to terminate their activities and with a nearly unlimited array of justifications to close them down.

*International Law and Practice* Whereas Russian officials justify the legislation as being in compliance with its international obligations and as being more liberal than several European legislations, their analysis is highly selective in their interpretation of foreign legislation as well as of recommendations from the Council of Europe. Furthermore, NGOs in Europe do not operate in such an antagonistic environment as they do in Russia.

Even before the adoption of the new NGO legislation in January 2006, NGOs in Russia, particularly those working in the democratization and human rights sectors were facing difficulties. The environment was one observers dubbed as a reversal of democratic gains in Russia from the 1990's as well as a consolidation of all sectors of the society under the authority of the Kremlin.

- *The Environment in which NGOs Work in Russia*, particularly those engaging in human rights defense and democracy promotion is one in which NGOs are regularly discredited by the government and subject to administrative and judicial harassment.
- *The Funding Environment for NGOs in Russia* has become such that local donors are not willing to risk funding activities that do not have the Kremlin's sanction. NGOs engaging in areas such as human rights and democracy support are left dependent on foreign funding. The new legislation is developed to take strict measures to control these funds.

The need for such legislation seems to have arisen from several tendencies in Russian public discussion at this time, including:

- *Russia is Addressing its Tarnished Image*. The Kremlin sees NGOs that criticize its policies or raise awareness of Russia's poor record on human rights and democracy as tarnishing Russia's reputation abroad. This concern has come to the fore as Russia ascends to the chairmanship of the G-8, the club of industrialized democracies, and when its membership in this group is called into question.
- *Russia is Preventing Color Revolutions*. Russia sees its influence waning with the regime changes in neighboring countries that have installed pro-Western

leaders. Russia wants to stave off the “revolutionary” momentum from spreading further and entering its own borders. NGOs have been perceived as a soft-power tool in a Western conspiracy to promote regime changes in Russia and its neighbors.

- *Russia Sees NGOs as Fronts for Foreign Spies.*

In conclusion, the effect of the new legislation on the sector is entirely dependent on its implementation. However, in light of the history of NGOs in Russia, particularly those working in democracy and human rights, there is little reason to feel confident that NGOs will not suffer at the expense of a law that essentially allows for very selective application. In the end, it is not only these NGOs that could potentially suffer, but also Russia’s reputation, which opens itself up to charges of authoritarianism and bias, based on how they will opt to apply the law.

The Russian government's recent initiative to redraft the legislation governing non-governmental organizations in order to provide greater oversight was officially intended as an anti-terrorism measure to curb money laundering and foreign funding of political activities inside Russia. However, the final law has very little resembling an effort to combat terrorism and money laundering. The law, as the discussions around the legislation highlight, illustrates the government's perceived need to strictly regulate NGOs to prevent external influences on Russia's political processes through their patronage by foreign funds.

There is particular concern for those organizations that call for social change, for example, those involved in developing the civil society sector, defending human rights, or promoting democratic processes in Russia. These organizations are generally more dependent on foreign funding. Also, they have been subject to greater government interference due to the sometimes controversial nature of their activities, which often puts them at odds with the government.

These NGOs have found themselves in a changed environment that Russia's liberal and foreign critics claim has the government increasingly rolling back the democratic gains of the 1990s that threaten Kremlin power and control. They claim that areas in which democratic gains had made strides, such as the mass media, opposition political parties, and regional autonomy, have been effectively neutralized and the reining in of NGOs is seen as simply part of the campaign to close down one of the last areas of Russian political life remaining beyond government control.

It is an environment in which Russia is aggressively responding to its image tarnished overseas by these very same critics, many of whom are the very same recipients of foreign assistance to NGOs or think tanks. Also, Russia has seen the influence it enjoyed with its neighboring countries in jeopardy, with the collapse of post-soviet regimes by popularly supported uprisings following flawed elections. NGOs are perceived to have played a role in these transitions and in Russia, this has raised the concern that its own citizens could possibly be inspired to do the same in upcoming elections in 2007 and 2008.

The legislation introduces measures that, depending on how they are implemented, could have a chilling effect on the civil society sector. The law gives greater powers to the state registration body at the Ministry of Justice, charging it with the registration of all NGOs, auditing their activities and finances, and effectively determining whether its activities may be carried out or not. NGOs all along have been at the mercy of various organs that have administered audits and checks, sometimes legitimately, sometimes not. With the new laws, there are now even more administrative levers at the government's disposal control the work of NGOs.

Previously, NGOs were regulated by Russia's 1995 law 'on public organizations' which allows state bodies to check NGOs finances and compliance with their charters. Should a regional justice administration find any discrepancies between an NGO's charter activities and its actual ones, it can give a warning and subsequently go to court to shut down the NGO. Administrative reforms in 2005 require recipients of foreign grants qualifying for tax exemption to show grant agreements for consideration to an Interagency Commission on Foreign Technical Assistance. As with all organizations in Russia, NGOs, are subject to all other competent regulatory authorities, such as the prosecutor general's office, the federal tax service, the

financial monitoring service, licensing agencies, and others, which are able to determine whether an organization is in violation of Russian law.

The question remains, what will the new legislation do to the vitality of the NGO sector after it takes effect in April 2006. In the best case scenario, it would simply lead to more reporting by NGOs and greater contact with registration authorities. In the worst case scenario, it would mean NGOs facing tight regulation, being forbidden to carry out their activities, and getting closed.

### *The Environment in which NGOs Work in Russia*

According to some figures, there are over 300,000 registered NGOs in Russia today. The majority of them perform social or charitable services; those involved in human rights defense, or environmental protection, which actively work to influence government policies and criticize its performance, are those that have been most susceptible to control and pressures.<sup>1</sup> Cases of pressure are documented in Human Rights Watch's (HRW) 2005 report "Non-governmental Organization: the next crackdown," which describes the Russian government's general tendency to reduce the space for political discussion and criticism. This has coincided with growing challenges to NGOs, particularly those in the human rights and environmental movements sector, and those working on the Chechnya conflict. The report illustrates the various administrative and judicial mechanisms through which such NGOs are either liquidated or their operations blocked.<sup>2</sup> They include denying entry into the country of foreign citizens working at NGOs or assisting them, refusing to register groups, arbitrarily closing organizations, using extremism legislation to shut down NGOs through the courts, the use of financial and other audits to bog down organizations administratively, and questioning the tax-exempt status for organizations receiving foreign funding.

HRW documents that pressures on NGOs tend to follow public verbal attacks on NGOs by government officials that have created a "poisoned" environment for them. These attacks began with President Vladimir Putin's May 2004 state-of-the-nation address, in which he criticized NGOs, claiming that many ignore "some of the most serious problems of the country and its citizens" and singling out those receiving foreign funds as acting against state interests or in the interests of foreign countries, so as not to "bite the hand that feeds them."<sup>3</sup>

Following Putin's lead, such rhetoric has proliferated throughout the government's public discourse. The Minister of Foreign Affairs charged that NGOs distort Russia's image abroad and accused humanitarian organizations in Chechnya of using their missions as a cover for "carrying out monitoring activities" and "offering no real

<sup>1</sup> <http://2005.novayagazeta.ru/nomer/2005/93n/n93n-s14.shtml> The newspaper *Novaya Gazeta* put out a supposed list of organizations accused of "hindering Russia from creating a sovereign democracy." The foreign organizations include National Democratic Institute, Moscow Carnegie Center, Ford Foundation, MacArthur Foundation, Friedrich Ebert Foundation, Transparency International, Medecins sans Frontieres and the OSCE. Domestic organizations include: Open Russia Foundation, Soldier's Mothers, Association "Golos," Institute, "Public Expertise," Moscow Helsinki Group, INDEM Foundation, National Anti-Corruption Committee, and Glasnost Defense Foundation.

<sup>2</sup> Human Rights Watch's 2005 Report "Non-Governmental Organizations: the Next Crackdown" <http://hrw.org/backgrounders/eca/russia1105/4.htm>

<sup>3</sup> Vladimir Putin's Address to the Federal Assembly of the Russian Federation, May 26, 2004 [online], [http://www.kremlin.ru/eng/speeches/2004/05/26/2021\\_64906.shtml](http://www.kremlin.ru/eng/speeches/2004/05/26/2021_64906.shtml)

humanitarian aid" to civilians there, questioning NGOs' noble intentions. Officials of the security services have charged NGOs for being fronts for foreign espionage, representing foreign interests, interfering in Russia's internal political affairs, and responsible for the political upheavals causing "color revolutions" in the CIS. This public discrediting of NGOs has further served as ammunition to justify the need to rein in NGOs with a strict NGO law.

### *The Funding Environment for NGOs in Russia*

In his defense of the amendments to the NGO legislation, Russia's foreign minister, Sergei Lavrov has said: "As in other nations, our NGOs must be financed by national sources, including government funds." In theory, domestic NGOs would pursue domestic funding, as Russian philanthropy has developed strongly since the 1990's. However, the climate for funding of independent social and political expression indicates Russian philanthropy has been edged out of Russian civil society.

In Russia, charity and philanthropy have found themselves becoming "governmentalized," or in line with the general government policy of the vertical power structure in Russia that ensures that all sectors of the country toe the government line.<sup>4</sup> Hence, only certain kinds of activities are sanctioned by the government for donors to contribute to. This has tended to stifle the growth of charitable giving with broader social agendas, such as developing civil society, dealing with issues surrounding the conflict in Chechnya, and protecting the environment and human rights.

This trend is illustrated by the experience of the Open Russia Foundation, and the fall from grace of its founder, Mikhail Khodorkovsky. Open Russia was virtually the only Russian-funded organization to give money to existing human rights organizations, such as Memorial, the Moscow Helsinki Group and others, as well as supporting new initiatives, such as the Public Verdict Foundation, aiding victims of government or law enforcement agency abuse. In addition, Khodorkovsky personally contributed to some opposition political parties in advance of the 2004 presidential elections.

However, his arrest, sentencing and detention of Khodorkovsky and the decline of his company, Yukos, sent a strong message to the world of Russian private and corporate philanthropy. Donors understood the warning that they should only give to those endeavors sanctioned by the government, otherwise they would risk jeopardizing their fortunes, businesses and even their personal freedom.

This has created a climate that NGOs involved in projects that challenge the government are completely dependent on funding from foreign foundations or governments. As a result, they are inevitably subject to criticism from Russian officials as representing the interests of foreign countries.

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<sup>4</sup> Ibid.

### *Russia is Addressing its Tarnished Image Problem*

More often than not, Russia's coverage in the foreign press can often be interpreted as negative. Indeed, one could almost say that Russia has a serious image problem. With its ascendancy to the presidency of the G-8, the foreign press has launched an onslaught of criticisms of Russia's human rights situation, press freedoms, aggressive business practices, and the latest attempt to cut gas supplies to its Western-leaning neighbors. These accusations and those leveling them have called Russia's very membership in the organization into question.

In response, Russia has recently taken on several measures to bolster its tarnished image abroad. In 2003, the Kremlin recruited the state Novosti agency to serve as its main public image instrument, installing slick PR experts and launching initiatives such as "Russia Today," the English language satellite news channel targeted to foreign audiences. In December, there was discussion of plans to set up a Washington-based think-tank funded with Russian money to respond to criticisms of Russia that come from foreign-based think-tanks with a Kremlin-friendly position.<sup>5</sup>

Deputy Foreign Minister Alexander Yakovenko said "the foreign and Russian mass media constantly cite opinions and judgments of well-financed Russian branches of foreign NGOs, presenting them as a reflection of our public opinion."<sup>6</sup> This reflects the attitude amongst some Kremlin advisors that Russia's bad press is a result of the foreign press getting their information from what the Kremlin considers anti-Kremlin or foreign funded sources of scholarship and information. They also believe that these sources of information -- NGOs, think-tanks, and even the western media itself are little more than PR merchants; that think-tanks such as the Carnegie Moscow Center are critical of the Kremlin because they have been paid to do so by wealthy Kremlin-challengers like Khodorkovsky, or by foreign governments, for whom they serve as mouthpieces. As Putin has said, in his argument against foreign financing of NGOs in Russia, and many other officials have echoed, "he who pays the piper calls the tune."

Foreign Minister Sergey Lavrov raises this notion of the source of financing influencing the production and promotion of ideas in his justification of the NGO law when he writes on the Ministry of Foreign Affairs website, "it is a matter of giving a clearer picture of Russian public opinion to our foreign partners. This is one of the reasons behind our wish to regulate non-governmental organizations in conformity with international practice."<sup>7</sup> Lavrov proposes that "our non-governmental organizations should be funded with national money, including from the budget. We should create a level playing field for competition." Thus we see a logic that criticism of Russia pervades, because it is well financed (by Russia's enemies). The focus on the funding behind scholarly work, journalism, civic activism, or human rights defense denies the possibility of them producing ideas independent of the ideology of their backers. By the same token, it assumes that should the funder be Russian, journalism, scholarship, or NGOs will be pro-Kremlin. However, this does not take into consideration the credibility of such endeavors.

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<sup>5</sup> Moscow Times December 6, 2005 A U.S. NGO Made in Moscow By Stephen Boykewich

<sup>6</sup> statements of A.V. Yakovenko at a conference on the role of civic institutions in national security at MGIMO  
12/1/0 5 [http://www.in.mid.ru/brp\\_4.nsf/sps/3D4676B873622AD7C32570CA0046C7B8](http://www.in.mid.ru/brp_4.nsf/sps/3D4676B873622AD7C32570CA0046C7B8)

<sup>7</sup> Sergei Lavrov "Foreign Political Results 2005: Thoughts and Conclusions"  
[http://www.mid.ru/brp\\_4.nsf/itogi/4E2913A74A69ADF7C32570E6004D151A](http://www.mid.ru/brp_4.nsf/itogi/4E2913A74A69ADF7C32570E6004D151A)

## *Russia is Preventing Color Revolutions*

The new legislation will place additional controls on foreign funding by demanding further reporting on how foreign grants are spent, and reserving the right to ban transfers of funds from abroad to NGOs (both local and foreign), should the activities they fund be deemed inappropriate by the authorities, and terminate planned programs and activities. Currently there are measures in place to oversee how foreign assistance is spent, for example, through the registration of technical aid and its subsequent monitoring as detailed in “Decision of the Government of the Russian Federation No. 1046 of September 17, 1999.” This Decision details the procedure for registering technical assistance, the supervisory work of the Interagency Commission for International Technical Assistance over this assistance, and the requirement that technical assistance is monitored by a federal body of the executive authorities.<sup>8</sup>

On November 28, when spelling out the key goal of the legislation, Putin said it was to block foreign-funded NGOs from “carrying out what amounts to political activity...Whether these organizations want it or not, they become an instrument in the hands of foreign states that use them to achieve their own political objectives.” Though Putin never fully elaborated on “political activity,” and as there is no legal definition as to what constitutes political activity, it seems that the concern about foreign interference in internal political processes has arisen from the perceived role foreign funding is alleged to have played in the “color” revolutions or the youth-driven popular revolts that toppled the governments of neighboring Ukraine, Georgia and Kyrgyzstan, triggered by popular skepticism and dissatisfaction with election results.

In those countries, NGOs may have simply accelerated inevitable processes among disaffected populations. Without directly backing opposition politicians and political parties, the West supported democratic movements in the former Soviet Union. They funded NGOs promoting press freedom, rule of law, free and fair elections, inevitably setting them into conflict with the entrenched interests of the old regimes. How significant and direct a role Western-backed NGOs played in regime changes in these countries is debatable, but Russia interprets these events as the readiness of the West to actively support the overthrow of CIS governments in Russia's backyard that they dub as undemocratic. Though most analysts say that the chances of such a scenario replicating itself in Russia are virtually non-existent, it is likely that the Kremlin is taking no chances, with upcoming elections in 2007 for the State Duma and 2008 for the presidency.<sup>9</sup>

The campaigns against foreign (specifically Western and US) democracy assistance may serve the Russian government as a convenient justification for democratic backtracking and authoritarian measures it would have taken regardless. Russia, within its own territory, has begun to maneuver greater control over the elements that are seen as playing parts in these revolutions – including the Internet, mobile phones,

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<sup>8</sup> “On Endorsing the Procedure for Registering Technical AID (Assistance) Projects and Programs, Issuing the Certificates Confirming that Facilities, Goods, Works and Services are Technical Aid (Assistance) and Monitoring the Use Thereof as Earmarked.”

<sup>9</sup> . It is also possible that the new legislation is designed to respond to the US House of Representatives’ approval last November of a budget bill to provide \$4 million for the development of political parties in Russia – funds that are disbursed to NGOs in Russia.  
[http://english.pravda.ru/main/18/88/354/15767\\_democracy.html](http://english.pravda.ru/main/18/88/354/15767_democracy.html)

youth organizations, even rock music.<sup>10</sup> Russia has started building its own capacity to provide parallel forms of assistance, which it deploys in the near abroad through election monitors and political consultants. In Ukraine, in the lead up to the 2004 elections, Russia deployed its own toolbox of soft-power institutions (think tanks, election monitors) to support Viktor Yanukovich, the Moscow-friendly presidential candidate.<sup>11</sup> The campaign against NGOs has been cast as a security issue – based on a theory that the West is trying to encircle Russia with pro-Western governments and subvert its political order. The concerns here seems to boil down to a territorial one, in which the stakes are high, of Russia seeing itself losing ground in surrounding territories long considered their sphere of influence.

As Alexei Malarkin of the Political Technologies Center says, “we have lost Ukraine and if we now lose Belarus, in a certain period, the North Atlantic Alliance will be standing along the full length of our western borders. This is an issue of prestige and security.” Belarus has been repeatedly been called a dictatorship by US officials and seems fair game for the kind of democracy assistance that Russia is suspicious of, as the US is behind a number of initiatives that seem bent on ousting Belarus’ president, Alexander Lukashenko. Malarkin, as well as other Kremlin political technologists identify NGOs as being the new soft-power battlefield between Russia and the West. He therefore advocates greater financial control over NGOs, “an option that allows shutting down an organization that violates something, and if anyone in the West objects to it, everything can be justified by economic reasons.”<sup>12</sup>

### *Promoting Security*

The need to control NGOs and foreign funding is frequently voiced by the security services, whose members promote the idea that laws controlling NGOs are necessary for national security.

With Russia’s sphere of influence diminishing following the “color revolutions,” it has lent its expertise to promote existing friendly regimes, taking a leading role in the campaign to express the threat posed by NGOs and the need to amend legislation to rein them in. For example, at the CIS meeting of secret service chiefs that took place in Astana, Kazakhstan in May, Russia's chief of security, Nikolai Patrushev, declared, "we cannot help being aware that attempts are being undertaken to use NGO activists in collecting sensitive data," and "we all need unified legislation across the CIS, something that would define the sphere of activity for NGOs; the Constitution and laws must be changed before the wave of orange revolutions spread to the leaders of the Commonwealth of Independent States."<sup>13</sup>

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<sup>10</sup> The Electronic Telegraph (UK) April 5, 2005 Putin tries to harness rock against the revolution By Kevin O'Flynn in Moscow

<sup>11</sup> Washington Post “Ukraine Vote Lets Russia Flex Its Emerging Political Muscle” October 31, 2004 <http://www.washingtonpost.com/wp-dyn/articles/A12519-2004Oct30.html>

<sup>12</sup> June 29, 2005 “Russian NGOs to be Brought under Financial Control” *Vremya Novostei*, June 29, 2005

<sup>13</sup> [http://www.newtimes.ru/eng/detail.asp?art\\_id=1398](http://www.newtimes.ru/eng/detail.asp?art_id=1398) Governments of other former soviet republics have likewise reconsidered their positions on NGOs. In the run up to its own parliamentary elections, coming right after the revolution in Georgia, Uzbekistan's Cabinet of Ministers adopted a series of resolutions and decrees granting very strict regulatory powers over NGOs leading to the curtailment of the funding and subsequent closure of nearly 60% of its domestic NGOs and the liquidation, suspension and paralysis of many foreign ones operating in Uzbekistan in 2005. In 2005, after the revolutions in the Ukraine and Kyrgyzstan, the Kazakhstan government called for the amendment of their NGO law, with measures that would allow greater control over NGOs, which were ultimately deemed unconstitutional by their Constitutional Court. In April 2005, the Tajik government

Before the State Duma, Patrushev tagged NGOs, especially foreign NGOs and those receiving foreign funding, as security risks to Russia. He claimed that Russia's opponents were trying to weaken Moscow's influence in the former Soviet Union and elsewhere, that US, British and other foreign NGOs were providing cover for professional spies in Russia, while Western organizations are bankrolling plans to stage a color revolution in Belarus. "Foreign secret services are more actively using unconventional methods in their work and are using the teaching programs of various NGOs to promote their interests," he said. "Under cover of implementing humanitarian and educational programs in Russian regions, they lobby the interests of the states in question and gather classified information on a broad spectrum of issues." Patrushev called for new legislation, as "the imperfectness of the legislation and lack of efficient mechanisms for state oversight creates fertile ground for conducting intelligence operations under the guise of charity and other activities."<sup>14</sup>

The characterization of NGOs as fronts for foreign espionage continually provided compelling justifications for the government to adopt stricter laws to control NGOs. The day before the first passage of the draft laws, Patrushev gave an interview to the official daily *Rossiskaya Gazeta*, in which he discussed increasing espionage activity on Russia's territory.<sup>15</sup> Also, the day before the second passage of the draft law, Sergei Lebedev, head of Russia's foreign intelligence service, gave an interview to Interfax echoing the claim that foreign spies are using charities and other groups in Russia as a cover for their activities and that tighter regulation of NGOs was necessary for state security.<sup>16</sup> As Lebedev rarely gives interviews, his comments have been interpreted as an indication of the determination of the security services to see the new legislation introduced.

These statements effectively set the stage for the British "spy rock" scandal that unfolded in January, shortly after the signature of law on NGOs, which was one of the Putin administration's boldest attempts to expose western intelligence work in Russia. The Russian state TV broadcaster aired a story on January 23rd that gave form to the allegations of NGOs providing cover for foreign intelligence. The program, "Special Correspondent," hosted by popular journalist Arkady Mamontov, showed grainy video footage of what Russian intelligence officers said were British diplomats spying in Moscow, using a transmission device that had been placed in an imitation rock (the "spy rock") on a Moscow street. The officers said that the spies, who they identified as staff of the British Embassy, could download data from the transmitter onto handheld computers like an electronic dead drop.

The program noted that one of the embassy staff shown, Mark Doe, was a recruiter for the M16 and that his embassy work put him in contact with many NGOs. The program showed paperwork identified as payment documents signed by Doe, for grants to several prominent NGOs (including Eurasia Foundation, Center for the Development of Democracy and Human Rights Protection, the Committee against Torture, Moscow Helsinki Group, and the Institute of Law and Public Policy).

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introduced new regulations requiring foreign embassies and organizations working in the country to give notice to the authorities before making any contact with local political parties, NGOs, or media organizations.

<sup>14</sup> [http://www.usatoday.com/news/world/2005-05-12-russia-ngos\\_x.htm?csp=34](http://www.usatoday.com/news/world/2005-05-12-russia-ngos_x.htm?csp=34) Patrushev cited examples that the FSB had monitored and exposed intelligence gathering activities carried out by the US Peace Corps, the British-based Merlin medical relief charity, Kuwait's Society of Social Reforms and the Saudi Red Crescent Society.

<sup>15</sup> Interview with Nikolai Patrushev *Rossiskaya Gazeta* November 22, 2005

<sup>16</sup> Interview with Sergei Lebedev INTERFAX December 7, 2005

Though the link between NGOs and foreign intelligence was not precisely drawn, the implications of the suspicious connection, and their subsequent repeated articulation in the media and by Russian politicians, reinforced the notion of human rights groups in Russia being funded by British intelligence.

### *The Draft Law*

The first draft of the Law was drawn up by the Ministry of Justice and a group of deputies. It introduced amendments to the Civil Code, to the laws "On Closed Administrative Territories", "On Social Associations", and "On Non-Commercial Organizations." It placed new requirements on public associations, non-commercial organizations and foreign non-governmental non-commercial organizations. The amendments were approved by the State Duma in the first reading on November 23<sup>rd</sup> in an overwhelming show of approval (370 to 18, with 3 abstentions) within 16 days of their introduction.

The legislation, which gives the authorities greater oversight over NGOs, raised criticism from the NGO sector, in particular from democracy and human rights NGOs, which saw the legislation as potentially complicating their ability to operate in Russia. They argued that the draft law was in violation of international laws guaranteeing freedom of association and expression, gave public officials broad discretionary powers, and disproportionately burdened non-commercial entities in comparison to the obligations required of commercial entities.

The new measures introduced in the first draft of the legislation included the following:

- the introduction of additional registration procedures for all non-commercial organizations and new reasons to refuse registration to organizations;
- the requirement all informal groups to inform the government of their existence;
- unlimited authority to the registration body to audit both activities and finances of non-commercial organizations;
- the banning of subsidiaries of international NGOs and requiring existing ones to re-register as local public organizations or membership organizations.
- the prohibition of foreign citizens or stateless persons, who are not permanent residents of the Russian Federation, from founding, becoming members of or participants of NGOs.

### *Registration*

The draft law would empower the registration body at the Ministry of Justice with greater authorities beyond its administrative function. It would have the right to deny registration to organizations based on the criteria, "if the mission, objectives and business structure of the founder organization of a public association or of a foreign non-profit NGO are in conflict with the Constitution of the Russian Federation, constitutions of Federation Subjects, and other federal laws, and if activities of

founder organizations are focused on extremism and money laundering.” Denied applicants may appeal to the courts.

The process of registration for an NGO is significantly more complicated than the registration of a business, which entails a simple notification process based on the proper submission of documents to the appropriate authorities. For non-commercial organizations, this essentially would become a permission-seeking process.

The criteria for the denial of registration, has been criticized as being based on vague and non-objective determinations and lack of legal precedent. Critics say that this system for refusal can be easily abused or politicized, as an NGO deemed undesirable by the authorities could be denied registration based on minute technicalities in the content of their applications. NGOs would be at the mercy of public officials with broad discriminatory authority to subjectively determine whether an organization's founders' missions, objectives or activities conflict with the constitution.

#### *Notification Procedures for Informal Groups*

The draft legislation would require that informal associations without legal personality notify the registration body of their existence, stating, “public associations formed by citizens may be registered under the procedure set by this Federal Law and acquire the state of a legal entity or operate without state registration and acquisition of legal personality but subject to mandatory notification of the fact of its foundation and start-up made under the procedure regulated by the Russian Federation Government.”

This proposed amendment is unclear as to exactly which groups are required to notify the registration body; whether it includes a discussion group, a card-playing group, a group of friends who meet to play sports. If broadly interpreted, it creates a tremendous intrusion in citizens’ freedom of association, violating guarantees for freedom of association in the Russian Constitution as well as the following of Russia’s international obligations: Article 20 of the Universal Declaration of Human Rights; Article 22 of the international Convention on Civil and Political Rights; Article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms; Article 22 of the International Covenant on Civil and Political Rights; and Fundamental Principles on the Status of NGOs in Europe (which provide that “NGOs can be either informal bodies or organizations which have legal personality.”)

#### *Monitoring of Organizations by the Registration Body*

The draft would provide the registration body with broad monitoring authority over NGOs. The registration body would conduct a yearly audit to determine the compliance of an organization’s activities and spending with its charter. It would have the power to demand financial, economic and administrative documentation and to arrange a relevant inspection at any time without grounds, to oversee financial flows and activities. It could send its representatives to take part in an organization’s events. If it found a violation of the law, or an activity that is non-compliant with an organization’s charter, it could issue a written warning and give the organization at least one month to correct the violation. These warnings could be appealed to the court.

Critics note that the allocation of these powers, such as supervision of financial activities to the registration body is inconsistent with the body's competency and expertise. They are within the domain of authorities that ordinarily supervise the activities of economic entities such as the tax authority or the police and prosecutor's office. Furthermore, the discretionary power given officials of the registration body to interpret whether finances are used in compliance with an organization's charter would be appropriate only in the cases when an organization may be abusing tax breaks and engaging in for-profit activity, or if it is using state-budget funds. However, the law assumes that registration officials can best interpret which activities are necessary to comply with an organization's mission as stated in its charter. Given the numerous activities that NGOs engage in, it is unlikely that the registration body would have such broad expertise and this discretionary power would most likely be used indiscriminately.

The draft would allow officials from the registration body to attend an organization's events, but does not specify which kinds of events – this leaves the potential for interpretation that officials may even attend internal meetings, board meetings, strategy meetings, which would interfere in the operation of an organization and could even have a chilling effect on organizations.

#### *Banning of Subsidiaries of International NGOs*

The amendments state that subsidiaries of foreign non-profit non-governmental organizations (including branch offices, representative offices and affiliates) must be established in the form of a public association subject to state registration. This would require the liquidation of all currently legally operating representative offices and branches of foreign NGOs. If they would like to continue to operate in Russia, they would need to register as independent Russian legal entities, as public organizations or membership-based organizations.

This amendment came under much criticism from foreign governments, and it was ultimately dropped from the final law. The practice is uncommon as it is in violation of the European Convention on the Recognition of the Legal Personality of International NGOs and the Fundamental Principles on the Status of Non-Government Organizations, to which Russia is not a party.<sup>17</sup>

#### *Restrictions on Foreigners'/Stateless Persons' Rights*

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<sup>17</sup> Principle 37 of the Fundamental Principles on the status of Non-Government Organizations (“without prejudice to the applicability of the articles laid down in the European Convention on the recognition of the legal personality of International Non-Governmental Organizations for those states that have ratified that convention, foreign NGOs may be required to obtain approval to operate in the host country, but they should not have to establish a new and separate entity for this purpose. This would not preclude a requirement that a new and separate entity be formed where an NGO transfers its seat from one state to another.”)

Principle 38 of Fundamental Principles encourages ratification of the European Convention on the Recognition of the Legal Personality of International NGOs.

Under the European Convention on the Recognition of the Legal Personality of International NGOs, a state party is generally obliged to recognize the legal personality of an association, foundation, or other private institution established under the law of another state party. But only where the body concerned has a non-profit making aim of international utility is carrying on its activities in at least two states and its statutory office, management and control is in the territory of a state party.

The amendments prohibited foreign citizens or stateless persons, who are not permanent residents of the Russian Federation from being founders or members of public associations or non-commercial organizations, effectively limiting who may establish and be a member of such organizations.

This is problematic as it would deny non-citizens the right to free expression and association, rights which are guaranteed by the Russian Constitution (Article 62), which guarantees foreign citizens the same rights as Russian citizens.<sup>18</sup> It is also in contravention of Articles 10 and 11 of the European Convention on Human Rights and Fundamental Freedoms guaranteeing freedom of expression and association regardless of borders<sup>19</sup>, as well as the Resolution on Non-Profit Associations in the European Community.<sup>20</sup>

### *Public Discussion*

In Russia, there was much public discussion and criticism of the draft legislation calling for its withdrawal. On November 8, the Russian Donor's Forum published an appeal protesting the legislation. On November 10 a group of Russian NGOs likewise published an open appeal that the draft be withdrawn, claiming that if it was passed it would likely have dire consequences on the sector. On November 15, members of the newly formed Public Chamber, the Kremlin created body to represent the interests of civil society, put out a letter also noting the likely detrimental consequences of the law in its original draft would have on Russian civil society. The letter requested that the Duma delay consideration of the draft legislation until after the complete formation of the Public Chamber in January of 2006, when it would be able to hold broader public discussion on the matter. Within the Russian government, the draft

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<sup>18</sup> Article 62 states that: "foreign citizens enjoy the same rights on the territory of the Russian Federation." This can be restricted, according to Article 55, if it is to protect the constitutional system or the security of the country.

<sup>19</sup> European Convention of Human Rights Article 10:

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or the rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

#### Article 11

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

<sup>20</sup> Section F, points 1: "all discriminatory measures based on nationality that affect the right to belong to, form or administer an association be rapidly abolished throughout the Community, in respect of citizens of Member States."

also found critics in the Ombudsman, Vladimir Lukin and from Ella Pamfilova, Chair of the Presidential Council for Civil Society and Human Rights.

In December, the president sent the Minister of Justice, Yuri Chaika, to the Council of Europe in Strasbourg to bring the law into harmony with international practices. In his report before Putin, televised on December 6, Chaika argued that the draft was in compliance with European Standards and norms, including the European Convention of 1986 recognizing international NGOs as legal entities and on the Fundamental Principles of the Status of NGOs in Europe. However, the Council of Europe had presented provisional opinions giving guidelines and recommendations on the draft of the legislation to assist it in complying with European standards that were significantly more critical of the draft. The opinion was particularly critical of the proposed practices for refusing an organization registration. and advised more limited focuses of the inspections of NGOs to balance sheets and annual reports, and that only in cases of serious doubt as to the legality of the activities of an NGO, should there be further investigation – through the competent authorities in conformity with criminal procedure.<sup>21</sup>

Following Chaika's report, Putin stated that substantial changes were needed in the draft declaring that "democratic processes and civil society are our principal achievements. We shouldn't allow ourselves to throw out the baby with the bathwater..." He sent the draft back to the legislature giving them five days to redraft it in consideration of the concerns expressed by the Public Council and the representatives of Russian NGOs.

### *Final Signed Law*

The draft that was finally signed into law by the president in mid-January dropped some of the controversial aspects of the law, such as the requirement for all informal associations to notify the registration body of their existence and the requirement for the liquidation of foreign NGOs.

The final law grants significant control to the registration body of the Ministry of Justice over NGOs. This body will have significant discretionary powers to determine whether an organization should be registered. It will have the authority to conduct a wide range of investigations and oversight functions over all NGOs (local and foreign), of their finances, activities, and self-governance and determine based on its officials' subjective analysis whether NGOs are in compliance with the Law, with the Constitution and their own charters. It also has such powers to order the liquidation of an organization or to ban its activities or stop a transfer of assets to it.

The law also places new requirements and restrictions on who may qualify as a founder, participant and member of an NGO.

Whereas the Council of Europe recommended that the final law include its stated purposes (which were ostensibly to stop foreign funding of political activities in

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<sup>21</sup> Provisional opinion on amendments to federal laws of the Russian Federation regarding non-profit organisations and public associations by J. Tymen van der Ploeg, Professor of Private Law Faculty of Law, Vrije Universiteit Amsterdam - The Netherlands in co-operation with the Secretariat General of the Council of Europe (DGI – DGII) [www.coe.int/T/E/Com/Press/News/2005/20051206\\_opinion.asp](http://www.coe.int/T/E/Com/Press/News/2005/20051206_opinion.asp)

Russia, and combat terrorism and money laundering), the law does not make mention of these purposes or define these activities.

As the law takes effect in mid-April, one can only speculate how the Law's provisions will be implemented in practice. Many aspects of the law remain vague and undefined, and their severity will only become clear with implementation; also additional regulations have not been elaborated or made public.

The following discussion points out the aspects of the law that should be of concern to NGOs which will be required to comply with the law. It looks at the consequences the law may have on the life and vitality of the NGO sector. Some provisions of the law are unclear and need further elaboration. Many give public officials broad discretionary powers which often creates a breeding ground for abuses and will likely lead to violations of freedom of association and expression.

### **Registration and Denial of Registration:**

*a. for Public Associations and Non-Commercial Organizations;*

*b. for Branches or Subsidiaries of Foreign NGOs;*

*c. notification for Foreign Non-Commercial Non-Government Organizations Affiliates and Representative Offices.*

#### ***a. For Public Associations and Non-Commercial Organizations***

##### Registration with the Registration Body at the Ministry of Justice:

In the law, non-commercial organizations, like public associations, are required to register with the federal state registration body of the Ministry of Justice or its regional affiliates, as opposed to registering with the Tax Services.

Non-commercial organizations will be subject to registration procedures as provided in the new law, which specifies the necessary documentation to be submitted to the registration and timing in which the registration body must respond. According to the law, the registration body determines whether to approve registration, and enters an accepted applicant into the registry following a review by the tax services.

Public associations likewise are registered by the registration body according to the new law, which sets deadlines on the process of entering an organization into the state registry.

##### Grounds for Denying Registration to Public Associations and Non-Commercial Organizations:

The decision on granting or denying state registration to a non-commercial organization is taken by the registration body. In the past, based on the "Law on Registration of Legal Entities," (June 23, 2003) organizations could be denied registration if their documents were not filed or improperly filed. The grounds for denial of registration to Russian public associations are expanded in the new law; they include:

- if the charter statutes of a public association run counter to the Constitution or the legislation of the Russian Federation;
- if the documentation required for state registration in conformity with this Federal Law, has not been submitted in full, or the said documents have not been executed in a procedurally valid manner, or have been submitted to a wrong body in power;
- if the party acting as a founder of the public association, may not serve as a founder in compliance with the Law;
- if there exists a registered public association bearing the same name and maintaining activities within the same territory;
- if it has been discovered that the constituent documents, submitted for registration, contain unreliable information;
- if the name of a public association insults public morality, ethnic and religious feelings.

Notification of Denial of Registration:

Applicants denied registration will receive a written notification indicating which charter statutes of their application are in contravention with legislative provisions of the Constitution and/or legislation of the Russian Federation.

Applicants denied registration may appeal to a higher authority (decisions of regional branches may be appealed at the federal authority). They may also re-apply after correcting the shortcomings indicated

*Comments:*

*Some of the determinations for the denial of registration are not specific enough and leave much to the discretion of the registration officials, particularly in determining whether a charter's provisions are in contravention with Russian law. A more liberal approach, suggested by the Council of Europe, would be to not deny registration based on the contents of an organization's charter documents, (which could get as technical as objections to word choice) and that an organizations' legality be determined only by its activities.*

*Though the grounds for denial are broader than the previous legislation; it does coincide with similar practices internationally.<sup>22</sup> The formulation in the provision allowing for the denial of registration based on a "name of a public association that offends public morality, ethnic and religious feelings" is meaningless and vague, giving nearly unlimited grounds to the officials of the registration body to deny an applicant.*

*The law provides vast opportunities for the registration body to arbitrarily complicate the process of registration for a public association, for example, by repeatedly denying registration based on minute technical aspects of an application or by giving*

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<sup>22</sup> ICNL "Analysis of Law #18-FZ On Introducing Amendments to Certain Legislative Acts of the Russian Federation.

*subjective interpretations of whether an organization's mission and charter are in violation of the criteria that are grounds for denial of registration.*

### ***b. For Branches of Foreign NGOs***

In the new law, branches of foreign NGOs continue to register as independent legal entities, as do public associations and non-commercial organizations as specified in Article 13 (1).<sup>23</sup> This is somewhat unlike the procedure for representative offices and affiliates of foreign NGOs, which are not independent legal entities and do not undergo registration; representative offices and affiliates of foreign NGOs must provide notification to the federal registration body of their existence within six months of the law's enactment as covered later in this report.

#### Grounds for Denial of Registration of Branch Offices of Foreign Non-Commercial Non-Government Organizations:

The grounds for the denial of registration to the branches of foreign NGOs have been expanded. Branch offices may be denied registration:

- if there are problems with their documentation or the information contained therein;
- in case the goals and objectives of a foreign non-profit non-government organization's branch or representative office run counter to the Constitution and the legislation of the Russian Federation;
- in case the goals and objectives of a foreign non-profit non-government organization's branch or representative office may create a threat to the sovereignty, political independence, territorial integrity, national unity, unique character, cultural heritage and national interests of the Russian Federation;
- in case a foreign non-profit non-government organization's branch or representative office, formerly included in the register, was excluded from the register in connection with gross violations of the Constitution and the legislation of the Russian Federation.

#### *Comments:*

*The grounds for the denial of registration to a branch office “in case the goals and objectives of a foreign non-profit non-government organization's branch or representative office may create a threat to the sovereignty, political independence, territorial integrity, national unity, unique character, cultural heritage and national interests of the Russian Federation” is troublesome and the Council of Europe maintains that denying registration on such grounds is not consistent with Russia's obligations under Article 11 of the European Court of Human Rights.*<sup>24</sup>

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<sup>23</sup> Article 13 (1) refers to the Law on Non-Commercial Organizations, which has branches of foreign organizations register with the state registration body, and attain legal entity status once their information is put on the registry.

<sup>24</sup> Provisional opinion on amendments to federal laws of the Russian Federation regarding non-profit organisations and public associations by J. Tymen van der Ploeg, Professor of Private Law Faculty of Law, Vrije Universiteit Amsterdam - The Netherlands in co-operation with the Secretariat General of the Council of Europe (DGI – DGII) [www.coe.int/T/E/Com/Press/News/2005/20051206\\_opinion.asp](http://www.coe.int/T/E/Com/Press/News/2005/20051206_opinion.asp)

*In its analysis of the law, International Center for Not-for-Profit Law cites the rulings in the 1998 Sidiropoulos v. Greece case. In Sidiropoulos v. Greece, the European Court determined when it is legal to deny registration to organizations for reasons similar to those in the law, ruling that they are not “necessary in a democratic society,” that issues of cultural heritage are not a legitimate state aim to restrict the right to associate under Article 11.<sup>25</sup> The court emphasized in point 38 that “exceptions to freedom of association must be narrowly interpreted, such that the enumeration of them is strictly exhaustive and the definition of them necessarily restrictive.”<sup>26</sup>*

*According to the European Convention for Human Rights (ECHR), in a democratic society, the right to association can only be limited by law in the interests of “national security, public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.” The grounds for denial of a branch of a foreign organization’s registration do not meet the limitations specified in Article 11, justifying the curtailment of freedom of association, as reasons such as “threat to territorial integrity,” “cultural heritage,” “national unity,” or “unique character,” exceed the limits of the Article.*

*As with the grounds for denial of registration to public associations and non-commercial organizations, the terms for which branch organizations can be denied registration are vague, leaving much to the discretion of public officials of the registration body to determine whether an organization’s proposed activities or charter statutes would constitute any of the “threats” enumerated in the law that would serve as grounds for denial. Their vagueness, which allows for broad interpretation, is not in the spirit of the ECHR ruling that limits to the freedom of association guaranteed in Article 11 should be clearly determined.*

*Article 23, Section 8, which states that “the applicant shall be informed about the reason for said denial” but does not require anything more than a verbal notification of the explanation. Left without any written documentation, branch offices are effectively denied any recourse to take action such as correcting their documentation or making an appeal either to higher authorities or to the courts. Officials not only have complete discretion in taking such decisions, but are not held accountable for them – as they need not substantiate their decisions with documentation.*

Involuntary Liquidation of a Branch of an Organization: A foreign NGO’s branch can be liquidated if:

- the branch’s main organization has been liquidated;
- the NGO fails to supply reports according to the new reporting requirements;
- the organization’s activities are deemed to be incompatible with the goals declared in the organization’s founding documents or in its reports.

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<sup>25</sup> International Center for Not-for-Profit Law February 28, 2006, Analysis of Law #18-FZ On Introducing Amendments to Certain Legislative Acts of the Russian Federation [http://www.icnl.org/knowledge/news/2006/01-19\\_Russia\\_NGO\\_Law\\_Analysis.pdf](http://www.icnl.org/knowledge/news/2006/01-19_Russia_NGO_Law_Analysis.pdf)

<sup>26</sup> European Court of Human Rights, Case of Sidiropoulos and Others v. Greece (57/1997/841/1047) Judgment Strasbourg 10 July 1998 [http://www.pollitecon.com/html/reprints/sidiropoulos\\_v\\_greece.html](http://www.pollitecon.com/html/reprints/sidiropoulos_v_greece.html)

*Comments:*

*These provisions provide wide discretionary powers to public officials to call for the liquidation of a branch of a foreign NGO. As the law does not make further provisions or specifications as to how to determine whether a branch's activities are compatible with an organization's mission, founding documents or reports, these determinations are made entirely by the registration body, which may call for a branch's liquidation in court.*

*It is nearly impossible for the registration body to execute this provision fairly and competently. It would require a comprehensive understanding of the various issues that NGOs address to make qualified determinations on how NGOs are supposed to fulfill their missions.*

*The penalties for liquidation of a branch for violations such as the failure to supply reports in a timely fashion seem extremely severe, particularly in comparison to the penalty for failing to submit a tax return, which is simply with a fine.*

***c. Notification for Foreign Non-Commercial Non-Government Organizations Affiliates and Representative Offices***

Representative offices and affiliate offices of Foreign NGOs have a distinct status in the Russian Federation -- they are not considered legal entities in Russia, but as subsidiary offices of a legal entity in another country. They operate based on the charters of their headquarters' offices and represent the interests of their headquarters, provide its defense, and carry out some or all of its headquarters' functions. They are defined in the law as organizations:

- set up in compliance with the legislation of a foreign state beyond the territory of the Russian Federation,
- whose founders do not include any government agencies,
- whose activities are not carried out for the purpose of obtaining profits and distributing the said profits among the participants.

Prior to the adoption of the current law, affiliates and representative offices of foreign NGOs notified the Russian Ministry of Foreign Affairs of their existence. The new law, in Article 13 (2), states that they are to notify the state registration body. The notification procedure is similar to the registration of a branch office. The new law stipulates new grounds for the denial of notification, very much like those for which a branch office of a foreign NGO may be denied registration, including:

- if the information and documents have not been submitted in full or the documentation has not been adequately executed;
- if it has been established that the constituent documents submitted by foreign non-commercial non-government organization contain unreliable information;
- if the goals and objectives of the creation of a foreign non-commercial non-government organization's affiliate or representative office run counter to the Constitution and legislation of the Russian Federation;

- if the goals and objectives of the creation of a foreign non-commercial non-government organization's affiliate or representative office may create a threat to the sovereignty, political independence, territorial integrity, national unity, unique character, cultural heritage and national interests of the Russian Federation;
- if a foreign non-commercial non-government organization's affiliate or representative office, formerly included in the Registry, was excluded from the Registry in connection with gross violations of the Constitution and the legislation of the Russian Federation.

Organizations denied notification may appeal to the courts. Re-application is possible if any errors are remedied.

#### *Comments*

*Problematic Grounds for Denial of Registration:* *The reasons for denial of registration are problematic as is the denial of registration to NCOs and branch offices of foreign NGOs. The law contains broad, vague language that is not consistent with Russia's obligations to the ECHR, (see discussions above).*

*Approval of Notification:* *Technically, the registration body must approve notification within 30 days of receiving it, however, no deadline is given for denial.*

*Organizations not Covered by the Law:* *The new law does not cover foreign organizations founded by government agencies that are not involved in the work of the organization. As the law allows foreign organizations to carry out activities in the Russian Federation through their branches, affiliates and representative offices, it does not cover foreign NGOs engaging in Russia but do not have any physical presence or legal status in Russia. As the law does not give a definition of what constitutes activities, it is unclear whether any activity, such as giving a grant, conducting an assessment is permitted without notification.*

### **Government Supervision of NGOs**

The Law gives extensive access and frequency to the registration authorities to obtain information about the activities, finance and governance of NGOs.

- a. Supervision of NGOs and Reporting from NGOs***
- b. Special Reporting Requirements for Branches and Representative Offices of Foreign Non-Commercial NGOs***
- c. Termination of Activities Sponsored or Implemented by Foreign NGOs***
- d. Additional Reviews of Foreign Non-Commercial NGOs by State Agencies.***

#### ***Supervision of NGOs and Reporting from NGOs***

##### *Monitoring of Activities:*

The law gives substantive supervisory authority to the registration body to check that activities of organizations coincide with purposes specified by their charters, and that donated funds and assets are used in accordance with their declared purposes.

#### Reporting on Activities:

The law increases the reporting obligations of non-commercial organizations and their staff on their activities and finances. The obligation to report on finances and assets applies in to funds and property that public associations receive from both local and foreign sources, organizations and persons (including stateless persons), which will require extensive reporting. The reporting schedule and procedure will be established in a regulation.

#### Authority of Registration Body to Summon Public Associations' Internal Documentation:

The registration body will have the right "to summon documents containing resolutions by a public association's governing bodies."

#### *Comment*

*Broadly interpreted, this seems to enable the registration body to demand any and all documents dealing with an organization's self-governance and internal matters, policies, property and finances. It is not made clear in the law of the necessity of the registration body to see the internal workings of organizations.*

#### Authority of Registration Body to Send Representatives to Participate in NGOs' Events:

The registration body may send over representatives to participate in events held by NGOs.

*The legislation does not entirely specify which events they refer to – whether these are public events or internal organizational meetings, such as strategy meetings, board meetings or simply day-to-day operations.*

#### *Comment*

*In the broadest interpretation, the law provides for unlimited surveillance of an organization's public as well as private workings. Such results could hurt many citizens' initiatives, potentially interfering in the execution of such initiatives or intimidating an organization's members and service recipients from taking part in an organization's work. In that case, it would constitute a violation of Article 8 of the European Convention of Human Rights, which protects the right to privacy and against arbitrary interference by the authorities in activities or premises.<sup>27</sup>*

#### Annual Reviews by Registration Body:

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<sup>27</sup> This is argued in the EHRR case of *Niemetz v. Germany* (December 16, 1992), if the authorities inspected association premises without any appropriate limits recognizing the rights of associations under international law.

The registration body may check, no more than once a year, that the activities of an organization comply with the statutes of its charter, and that the organization's expenditures coincide with their stated purposes.

*Comment*

*This provision has been the target of much criticism as its proper and fair implementation would demand of the registration body an impossibly vast range of expertise of the many sectors in which NGOs work in order to review the compliance of numerous specialized organizations' activities with their goals as stated in their charters and missions.*

Access by the Registration Body to Financial and Economic Activities from Other Government Authorities:

The registration body may summon and obtain information on an organization's financial and economic activities from various state agencies overseeing finances and taxes. The registration body can issue warnings to organizations in cases of violations and ultimately appeal to the prosecutors for their closure if a violation is left uncorrected.

Authority to Issue Warnings and Shut Down NGOs Due to Violations:

The registration body will have the ability to issue written warnings to an organization's management specifying the grounds for the warning and a time period of no less than a month for the correction of violations.

The registration body may ask the courts to shut down an NGO after two minor violations or one "gross" violation of the Constitution or of other laws. However, it is not entirely clear precisely which legal violations would count as grounds for closure (such as violations of sanitary, fire or safety regulations).

*Comment*

*For those failing to provide reporting in a timely fashion, this is a harsh penalty. The law provides that a public association or non-commercial organization's failure to provide required information in a timely fashion can be used as grounds by the registration body to bring a claim to court stating that the organization has terminated its activities as a legal entity and requesting it be excluded from the registry of legal entities. This penalty is significantly harsher than the fines on organizations or businesses submitting late tax returns.*

***b. Special Reporting Requirements for Branches and Representative Offices of Foreign Non-Commercial NGOs***

New Reporting Requirements:

The law provides new reporting requirements for NGOs. Non-commercial organizations and public associations must report "about levels of financial resources received, their proposed distribution, objectives and actual expenditure and also the expenditure of such resources provided by individuals and corporate entities."

This requires not only reporting on the receipt and allocation of finances and property, but also includes the intended use of such assets, the purposes for which funds are used, actual expenditures, programs that are planned, as well as planned allocation of funds or property to beneficiaries in Russia (both to persons or legal entities) .

The registration body will also have the same authority to supervise branch, affiliate or representative offices as it would a domestic non-commercial organization.

As with the reporting requirements for non-commercial organizations and public associations, the government will subsequently issue a regulation determining a more detailed description of the form and nature of the reporting procedure.

#### Reasons for Removing Representative Offices and Affiliates from the State Registry.

Article 23, Sections 8 and 9 of the law state that at the decision of the registration body, a representative office or affiliate of a foreign non-commercial NGOs can be removed from the State Registry if it fails to submit reports in a timely manner. This is similar to the provision on branch offices which can be involuntarily liquidated for failure to submit required reports in a timely manner.

An organization can also be removed from the Registry should it carry out activities inconsistent with those listed in its notification or information in an organization's reports.

In Section 12, the law provides for the striking of an organization from the registry, should a branch, affiliate or representative office of a foreign NGO fail to terminate a program following a written notice from the registration body to do so.

#### ***c. Termination of Activities Sponsored or Implemented by Foreign NGOs***

##### Authority to Terminate the Implementation of a Program of a Subdivision of a Foreign Non-Commercial Non-Government Organization

The registration body may notify a foreign non-commercial NGO in writing of its decision forbidding it to implement a planned program or activity. The organization, upon receiving the decision must terminate the program or else risk being dropped from the State Registry

In Article 23, Sections 12 and 13, the law provides the registration body with the ability to terminate implementation of any existing program of a subdivision of a foreign non commercial non-government organization seemingly without reason, or specification of what grounds would constitute an appropriate decision to take such action. Non-compliance will lead to the exclusion of the foreign NGO's branch office or representative office from the Registry and the subsequent liquidation of the organization.

##### Authority to Ban the Transfer of Funds or Property by a Foreign Non Commercial Non-government Organization's Affiliate:

The registration body is authorized to ban a transfer of funds from a foreign non-commercial NGO to a Russian recipient (either a person or legal entity) on the basis of defending "the Constitutional system, morality, health, rights and lawful interests

of other persons, and with the aim of defending the country and the security of the state."

The law allows the registration body to ban a transfer of funds or property by a foreign non-commercial organization's affiliate (representative office, branch office or affiliate) with a written decision expressing the aim of "defending the country and the state security."

*Comment:*

*These supervisory powers over branch, affiliate and representative offices of Foreign NGOs are intrusive and attribute very broad discretionary powers to the registration authorities. As the law provides in Sections 12 and 13 of Article 23, the authorized body of the government may issue a decision in writing giving the grounds for the banning of implementation of an existing program of such organizations, with very broad grounds for doing so.*

*There does not appear to be any rights for an organization to appeal such decisions and failure to comply are severe -- leading to an organization's removal from the State Registry and subsequent liquidation.*

*These provisions are not consistent with ECHR Article 11, as they interfere in the right to associate for the purpose that the program, banned by the authorities, was intended to fulfill. Again, this kind of interference or limitation on the right to associate is specified in the Article, and the restrictions in the law are not in compliance with these limitations. It is recommended that the banning of transfers of assets be done only with court approval. Also, organizations should be granted the right to appeal against such actions.*

#### ***d. Additional Reviews of Foreign Non-Commercial NGOs by State Agencies.***

In the new law, agencies overseeing tax and money laundering and anti-terrorism financing compliance will review the compliance of a non-commercial organization's expenditures and use of property with its statutory goals, the consistency of a foreign non-commercial NGO's expenditures and use of property with its goals and objectives. These reviews will be reported to the registration body.

*Comments*

*This provision gives the government authority to collect information that is not related to any regulatory goal of this law and the use of the information is not clear. If an organization was receiving either a tax exemption or utilizing state funds, then such monitoring would be warranted. Rather, the law calls for close oversight over foreign funding without any justification of its regulatory purpose or indication of how the information will be used.*

#### **Founder's Rights**

Requirement for Founders, Participants and Members of Non-Commercial Organizations to be Residents of the Russian Federation and Other Restrictions:

Article 2, Section 3 of the new law amends Article 19 of the Law on Public Associations and Article 15 on the Law on Non-Commercial Organizations, requiring that foreigners or stateless persons, who would like to found, participate in, or join a non-commercial organization, be a resident of the Russian Federation.

Persons who may not become founders, members or participants include:

- A foreign national or stateless person, whose stay in the Russian Federation has been established as persona-non-grata in compliance with the relevant procedure stipulated by the legislation of the Russian Federation. Such a determination is made by any of a number of government agencies (MVD, FSB, Ministry of Defense, Committee on Financial Monitoring, Financial Intelligence Service, MFA, Ministry of Justice, etc.) which can determine who is a persona-non-grata based on the Law on the Procedure for Exit and Entry into the Russian Federation.
- A person, whose name is listed in accordance with Section 2 of Article 6 of the Federal Law #115-FZ On Combating Money Laundering of Criminally Gained Income and Financing of Terrorism. (Unfortunately, this list is not one made publicly available to unauthorized persons).
- A public association whose activities were suspended in conformity with Article 10 of the Federal Law #114-FZ On Countering Extremist Activities
- A person whose actions have been defined by a valid decision of the court as bearing signs of extremist activities
- A person incarcerated by the decision of the court.

*Comment:*

*The new requirement that a foreign national or stateless person reside in the Russian Federation in order to found, participate or join a public association or non-commercial organization constitutes a violation foreigners' and stateless persons' rights of association, which are guaranteed by the Constitution of the Russian Federation as providing foreigners and stateless persons the same rights as its own citizens. It also constitutes a violation of the European Convention on Human Rights, which obligates the Russian Federation to protect the rights of all persons within its jurisdiction.*<sup>28</sup>

Furthermore, there are some unclear points in this part of the law requiring elaboration:

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<sup>28</sup> This is elaborated by the European Court of Human Rights, for example in the case of Bankovic v. Belgium (2001) BHRC 435, paragraph 19/21 that the benefits of the ECHR should extend to "all persons in the territories of the signatory States, even those who could not be considered as residing there in the legal sense of the word." The ECHR's interpretation of "within jurisdiction" does not limit itself to persons with legal residency in a country.

Also, such a limitation on the rights of a foreigner or stateless person, according to the ECHR, can be done in limited cases when there is the demonstration why such a ban is necessary "in a democratic society in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or the rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary," as elaborated in the convention.

- Residency: residency in Russia requires legally residing with a residency permit, a visa, and other documents, as well as physically present, as specified in the Law on the Legal Status of Foreigners. Several questions then arise on foreigners involved in NGOs as founders, participants or members. Must they maintain a constant physical presence? Should their status be terminated upon their departure from the country, even for temporary departures?
- Documentation of Residency: Must documentation be presented for all founders, members and participants of an NGO? What kind of documentation is necessary?
- Existing Organizations with Foreign Founders: What happens to public associations and non-commercial organizations that currently have foreign founders? As these organizations are required by the law to bring their founding documents into compliance with the law, the founding documents of such organizations must identify the founders according to the previous law on Public Associations and Law on Non-Commercial Organizations. Can these provisions can be applied retroactively, as the founding of the organization is a historical act? Will they need to be liquidated and forced to re-register? Similarly with public associations that have non-resident foreigners as members, would their memberships need to be terminated?
- Government Money Laundering List: How will organizations be able to comply with this provision when the government money laundering list is not a public document? The list is intended for financial institutions to monitor transactions by persons suspected to be involved in money laundering. It is only available to authorized persons. Organizations therefore have no way of knowing if they have an association with a person on the list unless they are informed of it.
- Violation of the Rights of the Incarcerated: Under this law, incarcerated persons may not found, participate in or be members of public associations. This does seem to contradict the Russian Constitution (Article 32-3) which protects their right to associate (but limits their right to vote or run for public office). The question remains whether this provision applies retroactively, for example in the case of Open Russia, whose founder is currently serving a prison term.

### *International Law and Practice*

How does the law measure up with international standards? Members of the government promoting the amendments to the legislation have defended the initiatives as in line with international practices.

Following the publication of the final draft law, on January 18, Sergei Lavrov, Russia's Foreign Minister published an open letter in the *Noviye Izvestia* responding to critics of the law. He writes that the law corresponds to Western practice, that it received approval from the Council of Europe, honors Russia's international obligations and commitments and Russia's own civil code, and that "the reality is that

with the adoption of the new Russian law, there will be no dramatic changes in the activities of NGOs."<sup>29</sup>

Lavrov cites the example of France's legislation, which he claims is stricter than the new Russian law. According to Lavrov, French legislation enforces fiscal control on all religious brotherhoods and "associations of common benefits" (an entity similar to NGOs) if they intend to receive donations, inheritance or foreign assistance. They can only receive such assets after an administrative inspection of the activities of the organization. In Russia, only NGOs receiving donations from abroad will need to report them. In addition, French NGOs are required to submit accounting records to the local administration and the interior ministry upon request, whereas Russian law only requires a yearly financial check.

Lavrov failed to mention that, whereas Russian law provides for the registration body to examine whether an NGO is spending its money on its declared program, the French law allows for such a review only to examine whether an NGO's economic activities are unfairly competing with the for-profit sector. In other countries that Lavrov mentions, such as Israel, the authorities do not conduct extensive checks on an organization's expenditures so long as an organization's activities are deemed legal.

Lavrov also cites the Foreign Agents Registration Act (FARA) in the US, which he claims maintains strict controls over NGOs managed by foreign agents; while he claims that though "the court does not have a key role under it, as the Attorney General has significant powers, it can order any inspection in those NGOs." This interpretation of FARA overlooks several key factors -- first, that FARA covers very specific activities (not necessarily NGO activity) and second, that it is not a registration per se, but a disclosure or notification procedure.

FARA requires agents acting within the US, engaging in political activities, acting as public relations counsel, soliciting or dispensing assets within the United States for a foreign principal, or representing the interests of a foreign principal before the US government, to register as a foreign agent with the Attorney General. The Act covers a very specific range of activities and persons; "agent" as well as "political activities" are clearly defined within title 22, chapter 11, subchapter II of the US Code on the registration of foreign propagandists.

Unlike the NGO Law, FARA does not focus on NGOs receiving foreign funding, but entities engaged in lobbying, advertising, PR and fundraising. Registered agents for these foreign principals typically are US law firms, lobbying firms and public relations agencies, retained to provide their respective services to these foreign principals. The US Department of Justice's explanation of the Act notes that the Act does *not* apply to commercial, religious, academic or charitable works.<sup>30</sup>

FARA does not have any power to refuse registration, it simply requires registration -- which is a notification of a relationship between a principal and an agent; it cannot prevent or limit the ability of foreign governments or foreign organizations to fund charitable activities in the US, or any kinds of representation for lobbying or publishing activities on behalf of a foreign principal, nor does it limit the ability of US

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<sup>29</sup> <http://www.newizv.ru/news/2006-01-18/38591/>

<sup>30</sup> [http://www.usdoj.gov/criminal/fara/q\\_A.htm](http://www.usdoj.gov/criminal/fara/q_A.htm)

organizations to receive funds from foreign charitable organizations, foreign political parties, business or trade interests.<sup>31</sup>

The intention of FARA differs somewhat from the concept of the NGO law, though both intend to bring greater transparency and understanding of the financing of foreign interests.<sup>32</sup> The intention behind FARA is “to ensure that the Government and the people of the United States would be informed of the identity of persons engaging in political activities for or on behalf of foreign governments, foreign political parties and other foreign principals, so that their statements and activities could be appraised in light of their associations.”<sup>33</sup> Thus, it simply ensures the public and US lawmakers are aware of the sources of information disseminated by a person engaged in “political activities,” as defined in the Act.

Lavrov also claims that “on the whole, the complexity of the procedure for foreign NGO registration in the US and in Russia simply does not compare if one looks at the new law.” It is worth looking at several international practices as well as the US, in this case and it is notable that generally, the registration procedure for an NGO is generally no more complex than the procedure for registering a business. Also, registration is generally only denied in the case of a failure by an applicant to meet minimal formal requirements.

In the most liberal of cases, countries have a simple and voluntary registration procedure enabling an organization to get legal entity status, such as in Belgium, Luxemburg, France, the Netherlands and Portugal. In Sweden and Denmark, the existence of a written charter is enough to establish legal status. In France, Germany and the US, the procedures for an association to obtain legal entity status are more formal. However, in these cases, the procedure of registration is simply one of notification and the registering bodies do not themselves have the authority to reject an association’s application, except for in the case of an applicant’s failure to meet minimal formal requirements. In France, registration procedures are conducted by the prefectures (local divisions of the interior department), which does not have the right to deny notification, but can appeal to the courts for the dissolution of an association if it finds its activities or objectives to be illegal. In Germany, the procedure is

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<sup>31</sup> [http://www.usdoj.gov/criminal/fara/q\\_A.htm](http://www.usdoj.gov/criminal/fara/q_A.htm)

<sup>32</sup> ICNL “Note on U.S. Foreign Agents Registration Act” December 13, 2005 ICNL notes that the registration requirements under FARA are not invoked merely in the instance of the receipt of funding from a foreign organization or by the operation of a foreign organization in the United States. “Therefore, FARA registration would not be required in most instances where a charity or non-profit organization receives a grant from a foreign organization. In nearly all such cases, the recipient of the grant would be receiving funds to promote its own goals, and would not be considered to be acting as a direct agent of the grantor. Therefore, if a U.S. non-profit organization were, for example, to receive a grant from a foreign government or organization to conduct research, this would not make the U.S. charity a foreign agent requiring registration under FARA. This is likely true for several reasons, including the fact that the activities being funded in most cases do not fall under the scope of activities regulated by FARA. Most importantly, however, is that in conducting these activities, the U.S. NPO would not automatically have a principal-agent relationship with the foreign government or organization simply by virtue of receiving a grant, contract or donation from a foreign principal. Unless the relationship between the U.S. organization and the foreign principal is such that there is an explicit or implicit authority to act *on behalf of* that foreign government or organization, FARA is not involved. Therefore, unless this principal-agent relationship is in place, a U.S. NPO receiving a grant would not be required to register under the Act. The same would be true for a foreign organization acting directly. In such cases, because there is no representative involved – i.e., no agent – there is no requirement for registration under FARA. This is because the primary purpose behind FARA is to ensure that lobbying activities undertaken by individuals or organizations on behalf of foreign interests are identified as such. Where a foreign organization acts directly, there is no potential for confusion and no principal-agent relationship, and therefore, no registration is required.”

<sup>33</sup> See Report of the Attorney General to the Congress of the United States on the Administration of the Foreign Agents Registration Act of 1938, as amended, for the six months ending December 31, 2003, available at <http://www.usdoj.gov/criminal/fara/>.

administered by the court and the court *does* have the right to reject an association's registration *if* it fails to meet legal formalities, if the purpose is illegal or profit seeking. It must provide a substantive reason for a denial, and the denial may be appealed. In the US, each state's Secretary of State administers registration for legal entity status as a non-profit corporation. The state does not deny registration except for in the case of the failure to meet minimal formal requirements. Also, the registration procedure is identical for business corporations.

In nearly all of these cases, the registration as a legal entity is separate from the procedure required to receive tax-exempt or tax-preferential status. In the US, a corporation must be approved by the Internal Revenue Service as a tax-exempt organization; this requires a large volume of paperwork, after filing the articles of incorporation with the appropriate state entity, bylaws must be prepared, minutes maintained and certain federal and state tax exemption filings must be filed on a timely basis to attain a tax-exempt status. An organization's tax-exempt status can be subject to scrutiny due to the government's risk of loss to the budget revenue if the proper safeguards are not in place.

The Russian president as well as Russian lawmakers repeatedly stated that the aim of the legislation is to block foreign funded NGOs from carrying out political activities. Despite the lack of a clear definition of what constitutes political activities, the US and many other G8 countries maintain standards on non-governmental and non-commercial organizations involving themselves in politics, as well as the flow of foreign funding to influence political events in their countries, such as the prohibitions on the foreign financing of candidates in elections. In the US, there are restrictions placed on non-profit corporations and 510c3 charitable organizations from endorsing political candidates or spending more than a modest amount of time and resources to engage in lobbying. Nevertheless, the standards adopted for NGOs are generally made to make the work of NGOs more transparent and efficient and not to complicate them.

Lavrov responds to critics claiming that the legislation dealing with the refusal to register NGOs and to liquidate them is most in line with the practices of developed democracies. He notes that in France, organizations "founded on the illegal base or for illegal purpose that contradicts legislation, morals or threatens the integrity of the state's territory or the republican form of administration" can be subject to liquidation. The basis for refusal of registration and liquidation of an NGO in the Russian law is nearly the same in Finland. In Israel, the grounds for refusing registration is "suspicion of unlawful activity, threat to the existence of the democratic nature of the Israeli state, and also if the name of the organization is misleading or harming public policy or national feelings." Organizations can also be liquidated for debts as well as by the recommendation of someone investigating their activity. As written in these legislations, they seem to give rather broad opportunity for interpretation by officials and the court."

The laws of many European countries contain similar provisions and restrictions; however, it would seem that they have not been applied in a particularly restrictive method, nor have they been applied in such a way to raise charges of arbitrary behavior by the authorities. For example, according to Gunter Schirmer, the secretary of the committee on legal affairs and human rights in the Parliamentary Assembly of the Council of Europe, said that "Finland has a strict NGO law, but it is not applied

for repressions, and we never receive complaints from there.” He also noted that several small religious groups in France have made complaints.<sup>34</sup>

Therefore, it is hard to conclusively say that the new legislation falls short of international standards as aspects of the new Russian law draw on the body of European legislation. Should Russia’s practices implementing the law also be similar to those overseas, it should allow for the emergency of a vibrant NGO sector as in the rest of Europe. As Russia maintains a constant dialogue with bodies such as the Council of Europe, the issue of implementation and the life of these sectors should be a subject for ongoing dialogue. Though in the Russian media some senior Russian officials have claimed that the law has been approved by the Council of Europe, Secretary General Terry Davis has elaborated in response, that the Council has not and does not approve the Law, but simply makes recommendations for its improvement.<sup>35</sup> The Council is currently providing recommendations elaborating the Law for its implementation.

As Lavrov concludes in his letter, much depends on the proper implementation of the law. Given the environment in which the new law will go into effect, Russia’s NGO sector rightfully is concerned by the potential dangers to the sector. It has, in the past, seen the court system, registration bodies, tax organs, as well as visa regimes and other government agencies and functions used against its interests.

### *Conclusions*

How this law will be applied and what consequences it will have on the NGO sector are uncertain. It is therefore critical that NGOs and donors take on campaigns to keep this issue in the public eye. It is also key that NGOs and donors take measures to engage in any possibly dialogue with the authorities and to rehabilitate their much damaged reputation in the Russian mass media.

#### *NGOs*

NGOs and their donors should therefore continue to employ various advocacy strategies like the ones they successfully have done in order to raise awareness and public discussion on this issue in the media and in the international arena. This will be key during 2006 as there will be world attention on Russia, as it hosts the G8 summit; also it will be important to sustain that attention beyond 2006, as that attention wanes.

NGOs should take greater proactive measures in how they work with government. As Yuri Chaika had said upon his return from Strasbourg that a goal following the passage of the law was “to establish closer contact with our civil society and with its institutions,” NGOs may want to cooperate with those kinds of efforts. Given the current environment of suspicion in which they work, NGOs would be well served if they engaged in better practices of transparency and self-regulation. Certain such practices are standard overseas among NGOs, such as the publication of annual reports that detailed their activities as well as percentages of where their expenditures are spent (i.e. on salaries, grants to beneficiaries, etc.). These initiatives may make

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<sup>34</sup> *Moscow Times* Issue 3353 “How Russia’s NGO Law Stacks up” by Nabi Abdullaev, February 15, 2006

<sup>35</sup> INTERFAX “Russian NGO Law not Officially Approved by Council of Europe” March 3, 2006

their operations seem more above-board and transparent to not only the government but to the public at large.

NGOs should continue to collectively unite and advocate for their rights of association. To maximize their effectiveness, they should create accessible and operative informational resources to share amongst themselves strategies for compliance with the new legislation as well as to closely monitor the implementation of the laws.

### *Donors*

Donors, particularly government donors must also take measures to rehabilitate their image in Russia, and to protect the NGOs they are supporting. Some have argued that, the British Foreign Ministry did not take a sufficiently strong or public posture to defend the NGOs whose reputations were tarred following the British "spy rock" scandal.

Government donors engaging in democracy assistance need to be more sensitive to the fact that this kind of assistance is being eyed suspiciously worldwide, as laden with ulterior motives. It is also being denounced as constituting illegitimate political meddling. These donors need to address the growing distrust of this kind of assistance. A high level dialogue with Russian officials should be taken to better define what constitutes political activity and to determine guidelines for acceptable forms for overseas democracy assistance.

From Western government donors, this requires more sensitivity in their diplomacy. Democracy assistance needs to be sold as help or encouragement to Russia to comply with democratic norms, rather than seeming as efforts of outside countries controlling their politics. These donors should factor in what would be considered acceptable were a foreign state to support similar programs on their territory.

For the US, which has made democracy promotion the principle of its foreign policy, greater consistency is needed on its own policies on democracy and human rights at home. Curtailments of freedoms in the US, such as unauthorized wiretapping, and issues such as the rights of prisoners and detainees abroad have only lent fodder to Russia's critics of US democracy assistance in Russia that the US' commitment to human rights and democracy is not genuine, and is a pretext to justify intervention with recalcitrant governments abroad.

Similarly, US foreign policy needs to be more consistent in terms of which country's human rights and democracy records they criticize, as the US has been accused by its Russian critics of maintaining a diplomatic silence on the records of allies with less than sterling records on human rights and democracy.

Donor countries should continue to monitor the consequences of the law on the health of the NGO sector – particularly to those NGOs dealing with democracy and human rights issues. They should continue to develop coherent and nuanced ways to express their opposition to them and overturn them if possible. Some success came from the foreign response to the first draft of the NGO legislation.

### *Revision and Elaboration of the Law*

NGOs, donors and other interested parties should work with legislators to provide recommendations for revisions to soften the recently passed law, as well as assistance in generating reasonable regulations and elaborations of the law, if unable to reverse the law.

The law needs significant reworking to bring it in line with the spirit of safeguarding freedom of assembly and association. Exceptions to the right to freedom of association, particularly the provision in the law to deny registration or to close down an organization based on its activities, should be limited further and more precisely.

The law is vague and subject to broad interpretation by officials implementing its provisions and gives officials significant, almost unrestricted powers, for example – the authority to decide on an almost arbitrary basis whether to discontinue an organization without even being obliged to inform in writing of the reasoning behind their decision. As always, when too much discretionary power is put in the hands of public officials, it creates a high potential for corruption and abuse.

The law should put limitations on the access of registration officials on the activities of NGOs so that it does not constitute a gross violation of privacy and an organization's self governance.

The law should put limitations on the registration body's ability to ban activities and transfers of assets, perhaps subjecting such decisions to court approval and giving organizations the right to appeal against such actions.

It should also put limitations on how much information or the frequency of access the registration body has to an NGO, so that checks do not significantly bog down an organization and detract them from carrying out their actual work.

Further elaboration and additional regulations should be developed to ease NGOs' compliance with the law. Too many provisions of the law could trap NGOs into non-compliance – as some of the new requirements demand tasks that would be taxing on an organization's capacity, particularly smaller organizations. Simple and standard reporting schedules and formats should be developed, with simplified procedures for smaller organizations or smaller projects. Similarly, the requirement for residency documentation on founders, members and participants of NGOs is another such task that could perhaps be simplified so as not to overburden NGOs.

In general, the law should be evaluated for all the potential costs that it will incur. The costs that should be looked at include the costs to the state to implement the law, costs to the sector, and the costs to Russia's image.

There should be greater consideration of the cost efficiency of the law before large expenditures are taken in order to implement it. The cost to the state to supervise NGOs could likely exceed the amount donated by the state to support the sector or even the overall cost of NGOs.

The law is overly ambitious in its scope as it seeks to supervise, in an unprecedented fashion, the inner workings of hundreds of thousands of NGOs. To do so equitably and competently would require numerous civil servants at the registration body with a broad knowledge and experience of all the areas in which NGOs work.

Furthermore, the law will be impossible to implement in a fair manner towards all NGOs. The law provides for the possibility of government abuse of power, politicization of the process, and corruption through the selective closure of NGOs for not fulfilling terms of the law that likely will remain unfulfilled by many others. The government will inevitably open itself up to charges of bias and authoritarianism in its selective application of the law. In this respect, NGOs suffer, and so does Russia's reputation.