



ARTICLE 19

Russia: Draft Amendment to the Criminal Code  
Aimed at Countering Insult of Religious Beliefs  
and Feelings of Citizens, Desecration of  
Religious Objects and Subjects of Worship  
(Pilgrimage) and Sites of Religious Ceremonies

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April 2013

Legal analysis

## Executive summary

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In this analysis, ARTICLE 19 calls on the State Duma of the Russian Federation to reject the Draft Law Amending the Criminal Code of the Russian Federation and Some Legal Acts of the Russian Federation Aimed at Countering Insult of Religious Beliefs and Feelings of Citizens, Desecration of Religious Objects and Subjects of Worship (Pilgrimage) and Sites of Religious Ceremonies (Draft Law).

The Draft Law fails to meet international human rights standards; if adopted, it will introduce illegitimate restrictions on the right to freedom of expression. It *de facto* introduces a prohibition of defamation of religions into the Russian law and may considerably restrict scientific, political and artistic discourse on religious issues.

ARTICLE 19 has identified three main problems with the Draft Law that highlight the need for Russian legislators to refrain from adopting the Draft Law altogether:

- First, the Draft Law violates international freedom of expression standards as it does not comply with the three-part test under Article 19(3) of the International Covenant on Civil and Political Rights (ICCPR):
  - The Draft Law fails the test of legality, as it introduces overly broad and vague legal terms, such as “insult of religious beliefs and feelings,” “denigration of a religious service,” “religions constituting an inalienable part of the cultural heritage of Russian peoples” and “religious literature.” The vagueness and subjective nature of these terms can lead to arbitrary interpretation and abuse by law enforcement.
  - The Draft Law does not pursue a legitimate aim. ARTICLE 19 has repeatedly observed that there is a growing international consensus among states and UN human rights bodies who have agreed that prohibitions on defamation of religions and protections of symbols and beliefs are not only contrary to guarantees of freedom of expression but can be abused against the very religious groups that they purport to protect.
- Second, the Draft Law fails to comply with the requirements of Article 20(2) of the ICCPR that requires States to prohibit the advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.
- Third, the Draft Law singles out “religions constituting an inalienable part of the cultural heritage of Russian peoples” – presumably the Russian Orthodox Church. Instead of protecting its citizens (as ostensibly declared in the purpose of the Draft Law), ARTICLE 19 believes that this can be used in a discriminatory manner against other religious groups, in particular those holding minority or no religious views.

ARTICLE 19 calls on the State Duma of the Russian Federation to reject the concept of defamation of religions proposed in the Draft Law and refrain from attempts to introduce similar legislation in the future. We urge the Russian legislature to take steps to review its legal framework for compliance with international human rights standards and introduce a legal framework that is conducive to the protection of freedom of expression for all people.

## About ARTICLE 19

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The ARTICLE 19 Law Programme advocates for the development of progressive standards on freedom of expression and access to information at the international level, and their implementation in domestic legal systems. The Law Programme has produced a number of standard-setting publications which outline international and comparative law and best practice in areas such as defamation law, access to information and broadcast regulation.

On the basis of these publications and ARTICLE 19's overall legal expertise, the Law Programme publishes a number of legal analyses each year, comments on legislative proposals as well as existing laws that affect the right to freedom of expression. This analytical work, carried out since 1998 as a means of supporting positive law reform efforts worldwide, frequently leads to substantial improvements in proposed or existing domestic legislation. All of our analyses are available at <http://www.article19.org/resources.php/legal/>.

If you would like to discuss this document further, or if you have a matter you would like to bring to the attention of the ARTICLE 19 Law Programme, you can contact us by e-mail at [legal@article19.org](mailto:legal@article19.org). For more information on ARTICLE 19 work in Russia, please contact the Europe Programme at [europe@article19.org](mailto:europe@article19.org).



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# Introduction

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In this analysis, ARTICLE 19 reviews the Draft Law Amending the Criminal Code of the Russian Federation and Some Legal Acts of the Russian Federation Aimed at Countering Insult of Religious Beliefs and Feelings of Citizens, Desecration of Religious Objects and Subjects of Worship (Pilgrimage) and Sites of Religious Ceremonies (“Draft Law”)<sup>1</sup> for its compliance with international human rights standards.

The Draft Law seeks to amend the Criminal Code of the Russian Federation by introducing a new article into Section 25 of the Code, entitled “Crimes against public health and morals.” The new article 243.1 has two parts:

- In the first part, it prohibits public insult of religious services, groups, feelings and beliefs with penalties ranging from a pecuniary fine to up to three years imprisonment.
- In the second part, it establishes the crime of desecrating, damaging or destroying religious objects, venues and pilgrimage sites punishable with up to five years imprisonment.

Additionally, the Draft Law introduces a new administrative offence (Article 5.26 of the Code on Administrative Offences) defined as “public desecration and damaging of religious and/or liturgical literature, signs and emblems of belief systems.”

ARTICLE 19 has extensive experience in advocacy on the subject of defamation of religions at the international and regional levels and we have also worked extensively on the protection of the right to freedom of expression in Russia. The most recent – and relevant – interventions by ARTICLE 19 in Russia include the 2010 submission to the European Court of Human Rights on the case of *Samodurov and Vasilovskaya v. Russia*,<sup>2</sup> as well as several public statements on prominent cases involving defamation of religion in the context of artistic expression.<sup>3</sup>

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<sup>1</sup> This analysis is based on the original text of the Draft Law; available in Russian at <http://www.komitet2-22.km.duma.gov.ru/site.xp/052057124052057052.html>.

<sup>2</sup> Written Comments of ARTICLE 19 in *Samodurov and Vasilovskaya vs Russia*, to the European Court of Human Rights, May 2010; available at <http://www.article19.org/pdfs/analysis/russia-yuriy-samodurov-and-lyudmila-vasilovskaya-v-russia.pdf>.

<sup>3</sup> See, for example Russia: Government must halt prosecution of exhibition organizers, available at <http://www.article19.org/resources.php/resource/1587/en/russia:-government-must-halt-prosecution-of-exhibition-organizers>; Russia: ARTICLE 19 Condemns Conviction of Art Curators, available at <http://www.article19.org/resources.php/resource/1588/en/russia:-article-19-condemns-conviction-of-art-curators>; Russia: Putin’s party threatens law on ‘defamation of religions’ to deal with Pussy Riot, available at <http://www.article19.org/resources.php/resource/3349/en/russia:-putin’s-party-threatens-law-on-‘defamation-of-religions’-to-deal-with-pussy-riot>; Russia: ARTICLE 19 condemns guilty verdict in Pussy Riot case, available at <http://www.article19.org/resources.php/resource/3413/en/russia:-article-19-condemns-guilty-verdict-in-pussy-riot-case>; Russia: Prison sentences for Pussy Riot violate freedom of expression, available at <http://www.article19.org/resources.php/resource/3418/en/russia:-prison-sentences-for-pussy-riot-violate-freedom-of-expression>; Russia: Appeals court upholds Pussy Riot jail term and fails to protect political dissent, available at <http://www.article19.org/resources.php/resource/3475/en/russia:-appeals-court-upholds-pussy-riot-jail-term-and-fails-to-protect-political-dissent>; Russia: Pussy Riot ‘punk prayer’ video banned; available at <http://www.article19.org/resources.php/resource/3547/en/russia:-pussy-riot-‘punk-prayer’-video-banned>.

The Draft Law was introduced on 26 September 2012 by Boris Spiegel, a member of the Federation Council, the Upper chamber of the Federal Assembly (the Russian Parliament), and a group of 17 members of the State Duma. It is, apparently, the response of the United Russia ruling party, to the high-profile case of three members of the feminist punk rock band Pussy Riot who staged a 'punk prayer' in Moscow's Christ the Savior's Cathedral, as well as an award ceremony that mocked Patriarch Kyrill I for a PR blunder.

On 17 August 2012, three members of punk feminist group Pussy Riot, Nadezhda Tolokonnikova, Maria Alekhina and Yekaterina Samutsevich, were convicted for hooliganism for staging a 40-second performance in the main Moscow cathedral. On 21 February 2012, wearing brightly coloured clothes and balaclavas in their trademark style, the three women crossed themselves and bowed down on the altar before starting to perform their song, including the lyrics "Mother of God, Cast Putin Out." Footage of the women dancing and singing inside the church was then used in a video to accompany their song, which they described as a 'punk prayer', posted on their website the same day. Each of them was sentenced to a two-year prison term. In October 2012, the Moscow City Court approved the sentences for two of them, while releasing Samutsevich.

The authors of the Draft Law explain the need for this law in a short Briefing Note:<sup>4</sup> they refer to the absence of a Criminal Code article sanctioning insult of religious beliefs of the citizens who practice Christianity, Islam, Buddhism, Judaism and other religions that "constitute an inalienable part of the historical heritage of the peoples of Russia", or desecration of religious sites and ceremonies. In the Briefing Note the drafters also refer to the existing legal provisions in other countries aimed to protect the right of citizens to freedom of religion and belief.

ARTICLE 19, however, challenges these positions and argues that the Draft Law contravenes international law on freedom of expression, freedom of religion and equality, as well as Russian obligations in this regard.

In this analysis, ARTICLE 19 summarises the applicable international standards and reviews the provisions of the Draft Law in a greater detail.

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<sup>4</sup> The Briefing Note to the Draft Law is available in Russia at [http://asozd.duma.gov.ru/main.nsf/\(ViewDoc\)?OpenAgent&work/dz.nsf/ByID&D3429A62D1E770AC43257A8A0042F723](http://asozd.duma.gov.ru/main.nsf/(ViewDoc)?OpenAgent&work/dz.nsf/ByID&D3429A62D1E770AC43257A8A0042F723).

# Applicable international human rights standards

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## International freedom of expression standards

International legal mechanisms and standards that have emerged since the adoption of the Universal Declaration of Human Rights (UDHR) in 1948 protect both the right to freedom of expression and the right to hold beliefs.

The International Covenant on Civil and Political Rights (“ICCPR”)<sup>5</sup> provides the principal legal framework for Russia’s international obligations in relation to these rights, which are protected by Article 19 (freedom of opinion and expression), Article 18 (freedom of thought, conscience and religion or belief) and Articles 2, 26 and 27 (equality before the law and the prohibition of discrimination).

Importantly, the right to freedom of expression applies not only to information and ideas generally considered to be useful or correct, but to also those that are unpopular controversial, shocking or offensive to some people; the mere fact that an idea is disliked or thought to be incorrect cannot justify preventing a person from expressing it.

Article 19(3) sets out the test for assessing the legitimacy of restrictions on freedom of expression:

- First, the interference must be in accordance with the law;
- Second, the legally sanctioned restriction must protect or promote an aim deemed legitimate (respect for the rights and reputation of others, and protection of national security, public order, public health or morals); and
- Third, the restriction must be necessary for the protection or promotion of the legitimate aim.

The ICCPR does not support the notion that religions or beliefs as such can be the subject of a defamatory attack. The UN Human Rights Committee, charged with interpretation of the ICCPR (HR Committee) has never recognised such a notion either or held that defamation of religions could be a legitimate ground for restrictions on the exercise of freedom of expression. It has held, however, that the right to freedom of expression is of paramount importance in any society, and any restrictions on the exercise of this right must meet a strict test of justification.<sup>6</sup>

Moreover, the UN Special Rapporteur on the promotion and protection of the right to freedom of expression and opinion has stated that limitations on the right to freedom of expression

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<sup>5</sup> International Covenant on Civil and Political Rights adopted by UN General Assembly Resolution 2200A (XXI) of 16 December 1966, entered into force 23 March 1976.

<sup>6</sup> See inter alia *Kim v the Republic of Korea*, Communication No 574/1994 views adopted on 3 November 1998 and *Park v the Republic of Korea*, Communication No 628/1995 views adopted on 20 October 1998.

were “designed in order to protect individuals against direct violations of their rights” and “are not designed to protect belief systems from external or internal criticism.”<sup>7</sup>

Similarly, the UN Special Rapporteurs on freedom of religion or belief and on contemporary forms of racism, racial discrimination, xenophobia and related intolerance have emphasised that

[T]he right to freedom of religion protects primarily the individual and, to some extent, the collective rights of the community concerned, but it does not protect the religions or beliefs per se.<sup>8</sup>

The UN Special Rapporteur on freedom of religion has also emphasised that “the right to freedom of religion or belief does not include the right to have a religion or belief that is free from criticism or ridicule.”<sup>9</sup>

The UN Working Group on Arbitrary Detention has also recognised that while

[D]efamation of religions may offend people and hurt their feelings ... it does not directly result in a violation of their rights to freedom of religion.<sup>10</sup>

Importantly, in General Comment No. 34, the HR Committee stated that

48. Prohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the Covenant, except in the specific circumstances envisaged in article 20, paragraph 2, of the Covenant. Such prohibitions must also comply with the strict requirements of article 19, paragraph 3, as well as such articles as 2, 5, 17, 18 and 26. Thus, for instance, it would be impermissible for any such laws to discriminate in favour of or against one or certain religions or belief systems, or their adherents over another, or religious believers over non-believers. Nor would it be permissible for such prohibitions to be used to prevent or punish criticism of religious leaders or commentary on religious doctrine and tenets of faith.

Article 20(2) of the ICCPR sets limitations on freedom of expression and requires states to prohibit certain forms of speech, namely “any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.” Article 20(2) does not require states to prohibit all negative statements towards national groups, races and religions, but as soon as a statement advocates hatred in a way that it “constitutes incitement to discrimination, hostility or violence” it can be prohibited.

In its jurisprudence, the UN Human Rights Committee has stated that there is no contradiction between the duty to adopt domestic legislation against incitement under Article

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<sup>7</sup> Human Rights Council, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Ambeyi Ligabo, to the Human Rights Council, 28 February 2008 A/HRC/7/14, para 85.

<sup>8</sup> Report to the Second Session of the HRC A/HRC/2/3, 20 September 2006, para 38.

<sup>9</sup> Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir, 21 December 2009 A/HRC/13/40 para 39.

<sup>10</sup> UN Working Group on Arbitrary Detention, Opinion No 35/2008 (Egypt), Communication addressed to the Government on 6 December 2008, para 38.



20(2) and the right to freedom of expression.<sup>11</sup> In *Ross v Canada*, the Committee recognised the overlapping nature of Articles 19 and 20, stating that it considered that

[R]estrictions on expression which may fall within the scope of Article 20 must also be permissible under Article 19, paragraph 3, which lays down requirements for determining whether restrictions on expression are permissible.<sup>12</sup>

Thus, a law properly designed to implement Article 20(2) would automatically serve the aim of protecting the rights of others, specifically to equality, thereby satisfying the test for restrictions on freedom of expression.

The UN Special Rapporteur on the Freedom of Religion or Belief has taken the view that

[E]xpressions should only be prohibited under article 20 [of the ICCPR] if they constitute *incitement to imminent acts of violence or discrimination against a specific individual or group*. [emphasis added]<sup>13</sup>

## European freedom of expression standards

Likewise, regional human rights instruments do not permit placing restrictions on the exercise of freedom of speech in order to prevent criticism of religions.

Article 10 para 2 of the European Convention on Human Rights provides for imposing restrictions on freedom of expression. Any restriction must:

- be prescribed by law;
- pursue one of the listed legitimate interests and be proportionate to that aim;
- be necessary in a democratic society or meet a pressing social need.<sup>14</sup>

The purpose of any restriction on freedom of expression must be to protect individuals holding specific beliefs or opinions, rather than to protect religions or belief systems from criticism.

The European Court of Human Rights has consistently interpreted Article 10 as being applicable not only to information or ideas that are favourably received or regarded as

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<sup>11</sup> General Comment No 11: Prohibition of Propaganda for War and Inciting National, Racial or Religious Hatred (Article 20), 29 July 1983, UN Doc HRI/GEN/1/Rev 6 at 133 para 2. The Human Rights Committee has also addressed the issue of incitement to religious hatred in its examination of state reports. For example, in response to a report of Italy, the Human Rights Committee expressed concern about “reported instances of hate speech, including statements attributed to certain politicians, targeting foreign nationals, Arabs and Muslims, as well as the Roma”. The Committee accordingly requested Italy to “recall regularly and publicly that hate speech is prohibited under law and take prompt action to bring those responsible to justice”. See Human Rights Committee, Concluding Observations on Italy, 24 April 2006, CCPR/C/ITA/CO/5 para 12.

<sup>12</sup> Communication No 736/1997, UN Doc CCPR/C/70/D/736/1997, 18 October 2000.

<sup>13</sup> See Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir, and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Doudou Diene, further to Human Rights Council decision 1/07 on incitement to racial and religious hatred and the promotion of tolerance, UN Doc HRC 2/3, 20 September 2006, para 47.

<sup>14</sup> *Zana v Turkey*, judgment of the Grand Chamber of 25 November 1997, Application No 18954/91 para 51; *Lingens v Austria*, Judgment of 8 July 1986, Application No 9815/82, paras 39-40.

inoffensive or as a matter of indifference, but also to those that “offend, shock or disturb.”<sup>15</sup> Freedom of expression does not imply that an individual is to be protected from exposure to a religious view simply because it is not his or her own.<sup>16</sup>

The European Court’s jurisprudence indicates that individuals should be allowed to scrutinise, openly debate and criticise, even harshly and unreasonably, belief systems, opinions and institutions, as long as this does not amount to inciting hatred against individuals or groups.<sup>17</sup>

At the same time, there is no requirement under the European Convention to legislate in order to protect individuals from incitement to religious hatred. In the case of *Gündüz v Turkey*, the European Court has stated that

[T]olerance and respect for the equal dignity of all human beings constitute the foundations of a democratic, pluralistic society. That being so, as a matter of principle it may be considered necessary in certain democratic societies to sanction or even prevent all forms of expression which spread, incite, promote or justify hatred based on intolerance (including religious intolerance) provided that any ‘formalities’, ‘conditions’, ‘restrictions’ or ‘penalties’ imposed are proportionate to the legitimate aim pursued.<sup>18</sup>

Other European bodies have taken a similar position. Notably, in its Recommendation 1805(2007) on blasphemy, religious insults and hate speech against persons on grounds of their religion, the Parliamentary Assembly of the Council of Europe considered that “national law should only penalise expressions about religious matters which intentionally and severely disturb public order and call for public violence.”<sup>19</sup> The Council of Europe’s Venice Commission subsequently recommended *inter alia* that

- a) incitement to hatred, including religious hatred, should be the object of criminal sanctions as is the case in almost all European States ...
- b) That it is neither necessary nor desirable to create an offence of religious insult (that is, insult to religious feelings) simpliciter, without the element of incitement to hatred as an essential component [and]
- c) That the offence of blasphemy should be abolished (which is already the case in most European States) and should not be reintroduced.”<sup>20</sup>

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<sup>15</sup> *Handyside v the United Kingdom*, judgment of 7 December 1976, Application No 5493/72; *Giniewski v France*, judgment of 31 January 2006, Application No 64016/00 para 43.

<sup>16</sup> *Murphy v Ireland*, judgment of 10 July 2003, Application No 44179/98, para 72.

<sup>17</sup> See also Parliamentary Assembly of the Council of Europe Recommendation 1805 (2007), Blasphemy, religious insults and hate speech against persons on grounds of their religion, para 5.

<sup>18</sup> In this case, the Court also indicated that expressions that seek to incite or justify hatred based on intolerance, including religious intolerance, do not enjoy the protection as freedom of expression afforded by Article 10 of the Convention. *Gündüz v Turkey*, judgment of 4 December 2003, Application No 35071/97, para 40. See also European Commission on Racism and Intolerance, General Policy Recommendation No 7 on National legislation to combat racism and racial discrimination adopted on 13 December 2002 which recommends that the law should penalise public incitement to violence, hatred or discrimination when committed intentionally.

<sup>19</sup> Council of Europe, Parliamentary Assembly, Recommendation 1805 (2007), Blasphemy, religious insults and hate speech against persons on grounds of their religion, adopted on 29 June 2007 (27th Sitting), para 15.

<sup>20</sup> European Commission for Democracy through Law (“the Venice Commission”), Report on the relationship between freedom of expression and freedom of religion: the issue of regulation and prosecution of blasphemy,

## Other international standards

In a similar vein, the 2009 *Camden Principles on Freedom of Expression and Equality* (Camden Principles)<sup>21</sup> emphasise, *inter alia*, that restrictions on harmful speech should be narrowly construed. The Camden Principles, developed by ARTICLE 19 on the basis of discussions involving a high-level group of UN, Council of Europe and EU officials, as well as civil society and academic experts on freedom of expression and equality. They represent a progressive interpretation of international law, general principles of law and accepted state practice.

Building on international human rights law on incitement to hatred, the Camden Principles state that:

All States should adopt legislation prohibiting any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (hate speech). National legal systems should make it clear, either explicitly or through authoritative interpretation, that:

- (i) The terms 'hatred' and 'hostility' refer to intense and irrational emotions of opprobrium, enmity and detestation towards the target group.
- (ii) The term 'advocacy' is to be understood as requiring an intention to promote hatred publicly towards the target group.<sup>22</sup>

Furthermore, in 2012, ARTICLE 19 developed a specific set of recommendations on the state obligations under Article 20 para 2 of the ICCPR.<sup>23</sup> The policy brief *Prohibiting Incitement to Discrimination, Hostility or Violence* provides detail recommendations, including a "six-part incitement test." One of the main recommendations from the Policy Brief reads:

In cases of incitement, States should primarily employ a range of sanctions within civil and administrative law. Only in the most serious cases, when the authorities conclude that the particular incitement reached the highest level of severity, should criminal sanctions be imposed; criminal law should not be the default response to instances of incitement if less severe sanctions would achieve the same effect.

The provisions of the Draft Law are analysed in the light of the aforementioned standards.

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religious insult and incitement to religious hatred, Adopted by the Venice Commission at its 76th Plenary Session, CDL-AD(2008)026, 23 October 2008 para 89.

<sup>21</sup> ARTICLE 19, *Camden Principles on Freedom of Expression and Equality*, April 2009; available at <http://www.article19.org/advocacy/campaigns/camden-principles/index.html>.

<sup>22</sup> *Ibid.* Principle 12.1.

<sup>23</sup> ARTICLE 19, *Prohibiting Incitement to Discrimination, Hostility or Violence* (Policy Brief), 2012; available at <http://www.article19.org/data/files/medialibrary/3572/12-12-01-PO-incitement-WEB.pdf>.

# Analysis of the Draft Law

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## The Briefing Note

The Briefing Note to the Draft Law points out to a legal gap in the Criminal Code of Russia in the area of “protecting religious beliefs, as well as objects and venues of worship and pilgrimage.”

The note further mentions the social danger of the acts criminalized by the Draft Law, stating that they violate traditional and religious norms which have been shaping for centuries, denigrate moral values of the society, contradict the morality, provoke harsh consequences and are explicitly anti-social.

Finally, the Briefing Note makes a general reference to “the majority of foreign states” that have similar legal tools “to ensure their citizens’ rights to freedom of religion and protect their beliefs.”

As explained in the previous section, the adoption of a law criminalizing insult of beliefs, objects, venues of worship and even “religious books” would go against Russia’s obligations under the international human rights law, which does not award legal protection to religious beliefs and dogmas. Equally, the ICCPR does not allow restrictions to be placed on the exercise of the right to freedom of expression for the purposes of ensuring respect for values, beliefs or religions, or protecting them from defamation or abuse.

We also note that to be justified under international human rights law, the restriction imposed by the law must also be necessary and proportionate to a specific need. In highlighting this point, the Human Rights Committee has also stated that

[L]imitations may be applied only for those purposes for which they were prescribed and must be directly related and proportionate to the specific need on which they are predicated. Restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner.<sup>24</sup>

The reference to other countries’ laws in the Briefing Note in the context of the Draft Law seems too general to serve as a justification for its adoption. Although it is true that several established democracies still have provisions on defamation of religion/blasphemy on the books, most of these are rarely, if ever, used. For example, Norway saw its last case of prosecution in 1936 and Denmark in 1938. Other countries, including the UK, Sweden and Spain, have repealed their blasphemy laws. In the United States, the Supreme Court steadfastly strikes down any legislation prohibiting blasphemy, on the fear that even well-meaning censors would be tempted to favour one religion over another, as well as because it

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<sup>24</sup> Human Rights Committee General Comment No. 22: The right to freedom of thought, conscience and religion (Article 18), UN Doc CCPR/C/21/Rev.1/Add.4, 30 July 1993, para 8.

“is not the business of government ... to suppress real or imagined attacks upon a particular religious doctrine.”<sup>25</sup>

It is also true that most European states prohibit incitement to hatred (or “hate speech” more general) and in many cases, these prohibitions include protection on the grounds of religious beliefs. However, such laws protect the holder of the religious belief from violence or the threat of similar harms, and not the beliefs as such – they are not intended to protect the content of their beliefs from criticism or ridicule.

## The Draft Law

The Draft Law comprises three articles.

- Article 1 of the Draft Law introduces a new Criminal Code Article 243.1. In its part 1, the article establishes a crime of public insult and denigration of religious services and other religious ceremonies of religious groups practicing religions that constitute an inalienable part of the historical heritage of Russia; as well as of public insult of religious feelings and beliefs of citizens. This crime is sanctioned with a fine of up to 300,000 roubles (9,500 USD), or with forced labour for up to 200 hours, or with up to one year of imprisonment.

Part 2 of Article 243.1 establishes a new crime of desecrating objects and sites of religious worship (pilgrimage), venues of religious services and other religious ceremonies of religious groups that practice religions constituting an inalienable part of the historic heritage of the peoples of Russia; as well as damaging and destroying such objects or venues. This crime is sanctioned with a fine of up to 500,000 roubles (15,800 USD).

- Article 2 of the Draft Law introduces changes into the Criminal Procedure Code, which are of technical nature and will not be analysed here.
- Article 3 of the Draft Law also introduces amendments into Article 5.26 of the Code of Administrative Offences of the Russian Federation
  - considerably increasing the maximum fines (by 100 times) for obstructing the exercise of the rights to freedom of belief and freedom of religion; and
  - introducing a new offence of public desecration of religious and/or liturgical literature.

The new version of Article 5.26 of the administrative code does no longer include the offence of insulting religious feelings, which the Draft Law transferred to the Criminal Code.

ARTICLE 19 has identified three major problem areas of the Draft Law:

The Draft Law does not comply with the international standards on the protection of freedom of expression

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<sup>25</sup> *Joseph Burstyn, Inc v. Wilson*, 343 U.S. 495, 504-05 (1952).

The Draft Law does not comply with the three-part test for restrictions on the right to freedom of expression under Article 19(3) of the ICCPR.

- Firstly, the Draft Law provisions are not “provided by law” as they do not have the qualities of legal certainty or accessibility. Article 243.1 includes terms such as “insult of religious beliefs and feelings,” “denigration of religious service,” “religions constituting an inalienable part of the cultural heritage of Russian peoples” and “religious literature” that are vague and unclear and are susceptible to arbitrary interpretation by courts. In some instances these concepts do not make sense – for example it is generally accepted that one cannot “insult” an idea or a non-living person, since such abstract concepts do not have feelings.<sup>26</sup> ARTICLE 19 further notes that the term “religious literature” introduced by the Draft Law into Article 5.26 of the Code of Administrative Offences does not exist in the Russian legal system, and therefore its meaning is unclear and may be arbitrarily interpreted by the Courts.
- Secondly, the Draft Law provisions restrict freedom of expression without being in pursuit of a legitimate aim, as exhaustively enumerated within Article 19(3) of the ICCPR. We reiterate that the right to freedom of expression may not be restricted to protect religious symbols and beliefs, or to prevent people who hold those beliefs from feeling offense. The ICCPR and the European Convention protect only the rights of individual persons and, in some instances, of groups of persons, but not abstract entities such as values, beliefs, ideas or symbols.

Hence, prohibitions in the proposed Article 243.1 are contrary to guarantees of freedom of expression. If adopted, it is likely that many forms of expression, including legitimate artistic, political, and religious forms of expression, will be subject to arbitrary restrictions and censorship by the State. This should be of concern to religious persons in Russia especially, as the very freedom to express religious viewpoints is threatened by these Draft Law provisions.

The Draft Law does not comply with the requirements of Article 20(2) of the ICCPR that allows for the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence

As outlined above, international law only *requires* that states restrict freedom of expression in limited circumstances, set out in Article 20(2) of the ICCPR as

[A]ny advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law."

The expression restricted by the Draft Law provisions does not fall within the category of expression that States are required to prohibit under Article 20(2) of the ICCPR. Moreover, and as outlined above, these restrictions do not comply with the three-part test under Article

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<sup>26</sup> See: ARTICLE 19, Defining Defamation: Principles on Freedom of Expression and Protection of Reputation, 2000; available at <http://www.article19.org/data/files/pdfs/standards/definingdefamation.pdf>.

19(3) of the ICCPR – as they do not comply with the principle of legality or pursue one of the legitimate aims exhaustively enumerated within that provision.

The provisions in the Draft Law are clearly not intended to implement Russia's obligation under international human rights law to prohibit incitement. There are numerous elements of the prohibition of incitement under Article 20(2) of the ICCPR that are not present in the Draft Law provisions:

- Firstly, Article 20(2) of the ICCPR is concerned with national, racial or religious *hatred*. ARTICLE 19 understands “hatred” to mean a state of mind characterised as “intense and irrational emotions of opprobrium, enmity and detestation towards the target group.”<sup>27</sup> The Draft Law prohibitions do not concern themselves with such severe expression, but instead prohibit “insult” or “denigration” which falls beneath the threshold of “hatred.” Moreover, the Draft Law prohibitions concern expression targeting ideas and concepts, but do not target a group of persons *per se*.
- Secondly, Article 20(2) of the ICCPR prohibits the *advocacy* of hatred that *constitutes incitement* to hostility, discrimination or violence. The use of the terms “advocacy” and “incitement” implies that only expression that intentionally advocates hatred should be prohibited, and further that such expression must also be likely to and intended to cause hostility, discrimination or violence towards the protected group. The Draft Law prohibitions do not meet either requirement, firstly because they prohibit conduct without requiring intent, and secondly because they target only the expression of insult or denigration without requiring a showing of incitement to discrimination, hostility or violence. The Draft Law simply targets offensive expression without requiring proof that a prohibited outcome was intended or likely as a consequence of that expression.
- Thirdly, while Article 20(2) requires States to prohibit incitement, it does not prescribe criminal law as the only available response. Other sanctions within the civil and administrative law should also be considered. Restrictions on freedom of expression must still comply with the requirements of necessity and proportionality under Article 19(3) of the ICCPR. For this reason, administrative or civil sanctions will often suffice and comply with the principle of proportionality.

ARTICLE 19 further notes that the Russian Criminal Code already contains Article 282, which prohibits the “Incitement of hatred or hostility, as well as humiliating human dignity” and includes “religious affiliation” as a protected characteristic.

ARTICLE 19 finds that Article 282 of the Criminal Code does not reflect in exact terms the elements of Article 20(2) of the ICCPR, but that it nevertheless demonstrates that the tools for protecting those with religious beliefs from violence and discrimination exist in the code already and that further legislation is not necessary. Available sanctions include a fine, or one's income for the period of one to two years, or a ban on profession or public positions for up to three years, or compulsory labour for up to 180 hours, or corrective labour for up to one year, or with up to two years of imprisonment. The same acts committed with the use of

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<sup>27</sup> Camden Principles, *op. cit*, Principle 12.1

violence or threats of violence, by using one's official position, or by a group are sanctioned more severely, including with up to five years of imprisonment.

Article 282 demonstrates that further legislation is not required to protect individuals from harmful expression targeting them on account of their religious beliefs. However, ARTICLE 19 further notes that Article 282 does not comply with international standards on freedom of expression and itself requires reform to reflect each of the elements of Article 20(2) of the ICCPR outlined above. This would include removing references to the concept of "humiliating human dignity", and inclusion of the concept of "discrimination" in its place. Bringing Article 282 of the Criminal Code in line with international standards on incitement would enhance protections for people with religious beliefs in Russia, and also bring Russia into greater compliance with its obligations under international human rights law.

#### The Draft Law might lead to discrimination against certain religious believers in violation of freedom of religion or belief

The Draft Law singles out "religions constituting an inalienable part of the cultural heritage of the Russian peoples." This is discriminatory towards other religious groups and runs contrary to the constitutional principle of equality.

The Draft introduces a questionable concept of "religions constituting an inalienable part of the cultural heritage of the Russian peoples" without specifying these religions. The Briefing Note, however, lists the individual religions that the drafters had in mind. They are Christianity, Islam, Buddhism, Judaism, "and other religions."

ARTICLE 19 points out that the right to freedom of religion or belief itself requires that individuals belonging to *any* religion or beliefs should be protected. Observing that "dissenting or dispassionate believers are being marginalized and face interreligious or intra-religious problems", the UN Special Rapporteur on freedom of religion or belief has criticised "laws that openly discriminate against individuals on the basis of religion or belief or the perceived lack of religious fervour."<sup>28</sup> The Special Rapporteur has also emphasised that states have positive obligations to "create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their ... religion".<sup>29</sup>

ARTICLE 19 believes that if adopted, this provision bears the risk of undermining both the right to freedom of expression and the right to freedom of religious belief in Russia. Individuals who express or wish to express religious views conflicting with those favoured by the authorities are likely to face increasingly harassment and persecution as a consequence of the law.

#### **Recommendations**

- Proposed Article 243.1 of the Criminal Code should be eliminated;

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<sup>28</sup> Human Rights Council Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir, 21 December 2009 A/HRC/13/40 para 34.

<sup>29</sup> Human Rights Council, Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir, 17 July 2009 A/HRC/64/159 para 30.



- Article 282 of the Russian Criminal Code “Incitement of hatred or hostility, as well as humiliating human dignity” should be amended fully reflect the requirements of Article 20 (2) of the ICCPR.
- Proposed Article 5.26 of the Code of Administrative Offences should be eliminated.