

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and the Special Rapporteur for freedom of expression of the Inter-American Commission for Human Rights

REFERENCE:
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6 November 2017

Mr. Allegra,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, pursuant to Human Rights Council resolution 34/18; and as Special Rapporteur for freedom of expression of the Inter-American Commission on Human Rights, pursuant to article 18 of IACHR's Statute.

In this connection, we would like to bring to the attention of your Government information we have received concerning the U.S. Government's threats against media outlets in the United States and the damaging effects such public pressure has on the right to freedom of expression.

According to the information received:

Since taking office, President Donald Trump has routinely accused media outlets he disagrees with, such as CNN, NBC News, The New York Times, The Washington Post, of being "fake news", "dishonest", "disgusting", of "deform[ing] to democracy" and being the "enemy of the American people". The statements of President Donald Trump have questioned the credibility of the media and its sources after publishing news reports critical of his administration.

For example, between 28 January and 28 February 2017, the President of the United States posted at least seventeen messages on Twitter, where he described as "fake news" information disseminated by some media outlets about the first weeks of his administration.

On 28 January 2017, President Trump stated that "*[t]he failing @nytimes has been wrong about me from the very beginning. Said I would lose the primaries, then the general election. FAKE NEWS!*" The next day, he indicated that "*[s]omebody with aptitude and conviction should buy the FAKE NEWS and failing @nytimes and either run it correctly or let it fold with dignity!*".

On 3 February, he said that the reports spread by some media outlets about his conversation with the prime minister of Australia were false. "*[...] FAKE NEWS media lied*", he said.

On 4 February, he noted that "*the FAKE NEWS @nytimes is still lost!*"

On 6 February, President Trump said that “[a]ny negative polls are fake news, just like the CNN, ABC, NBC polls in the election” and stated that “[s]ome FAKE NEWS media, in order to marginalize, lies!”

On 9 February, he accused a named CNN journalist of spreading “FAKE NEWS!”

On 10 February, he accused “the failing @nytimes” of publishing a false story.

On 12 February, President Trump said, “FAKE NEWS media refuses to mention” that in Florida he was received by many supports. “Very dishonest!” he stated. On the same day, he again accused CNN of being a network of “FAKE NEWS”.

On 15 February, he said that, “fake news media is going crazy with their conspiracy theories and blind hatred, @MSNBC & @CNN are unwatchable, @foxandfriends is great!”.

On 16 February, he noted that “FAKE NEWS media [...] makes up stories and ‘sources’.”

On 17 February, he stated that “[t]he FAKE NEWS media (failing @nytimes, @NBCNews, @ABC, @CBS, @CNN) is not my enemy, it is the enemy of the American People!”

On 18 February, he called upon his followers not to believe “mainstream (fake news) media” reports on the performance of his administration.

On 20 February, he accused the media of spreading fake news about immigration and reiterated that, “FAKE NEWS media knowingly doesn’t tell the truth.”

On 26 February, he said that, “Russia talk is FAKE NEWS put out by the Dems, and played up by the media, in order to mask the big election defeat and the illegal leaks!”.

During the following months, President Donald Trump continued issuing similar statements. On 28 May, President Trump tweeted, “Whenever you see the words ‘sources say’ in the fake news media, and they don’t mention names...”

On 2 July, he tweeted “#FraudNewsCNN #FNN” with an image with a modified video in which he appears physically attacking a person with the CNN logo replacing his head.

On 7 August, he asserted “The Fake News refuses to report the success of the first 6 months: S.C., surging economy & jobs, border & military security, ISIS & MS-13 etc”. He then noted “The failing @nytimes, which has made every wrong prediction about me including my big election win (apologized), is totally inept!” Later that day he tweeted “The Trump base is far bigger & stronger than ever

before (despite some phony Fake News polling). Look at rallies in Penn, Iowa, Ohio” and affirmed “Hard to believe that with 24/7 #Fake News on CNN, ABC, NBC, NYTIMES & WAPO, the Trump base is getting stronger!”

On 27 September, he tweeted “*Facebook was always anti-Trump. The Networks were always anti-Trump hence, Fake News, @nytimes (apologized) & @WaPo were anti-Trump. Collusion?*”.

More recently, President Donald Trump made direct threats of possible government action or legal proceedings against media. On 5 October, he suggested that United States Senate Intelligence Committee, which is overseeing an investigation into Russia’s meddling in the 2016 US presidential election, should instead investigate media outlets for their “fake” and “made up” news coverage.

Later, on 11 October, President Trump suggested that certain news organizations should have their licenses challenged and be shut down. He stated “*With all of the Fake News coming out of NBC and the Networks, at what point is it appropriate to challenge their License? Bad for the country!*” “*Network news has become so partisan, distorted and fake that licenses must be challenged and, if appropriate, revoked. Not fair to the public!*”

Responding to President Trump's comments, on 17 October, the chairman of the Federal Communications Commission (FCC), Mr. Ajit Pai commented “*The FCC, under my leadership, will stand for the First Amendment. Under the law, the FCC does not have the authority to revoke a license of a broadcast station based on the content of a particular newscast.*”

Public officials, like all individuals, enjoy the right to freedom of expression under international human rights law, including the right to criticize or respond to media reports. However, government authorities, particularly those in senior positions, should take particular care to ensure that criticism does not itself constitute threats to undermine the rights others enjoy to exercise freedom of expression, whether those gathering and sharing information, in particular journalists, or the public seeking to receive it. In this regard, we express serious concern at a pattern of intimidation of media outlets and journalists whose reporting the US government, particularly the President of the United States, rejects. Comments such as those noted above generate pressure on media outlets that undermine an environment for a free and independent media and may have a serious chilling effect that could unduly restrict the exercise of freedom of expression in the country. Additionally, such comments can increase the risks that journalists face, and could suggest that the acts of violence aimed at suppressing them in one way or another enjoy the acquiescence of the government.

We would like to draw the attention of your Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above. In particular, we would like to refer to article 19 of the

International Covenant on Civil and Political Rights (ICCPR), ratified by the United States in 1992, which provides for the right to freedom of opinion and expression, and to article IV of the 1948 American Declaration of the Rights and Duties of Man, which provides for the right to freedom of investigation, opinion, expression and dissemination.

In connection with the above allegations, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council and by the Statute of the Inter-American Commission on Human Rights, to seek to clarify all cases brought to our attention, we would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please indicate the compatibility of the actions described in this communication with the above referred international standards.
3. Please indicate what steps the U.S. Government may be taking to pursue or implement the President's call that licenses be reconsidered by federal authorities.
4. Please indicate measures taken by the U.S. Administration to encourage media freedom and independence in the United States through public declarations, practices, and policies.

We would appreciate receiving a response within 60 days.

We intend to publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Government's to clarify the issue/s in question.

Your Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Minister Counsellor, the assurances of our highest consideration.

David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

Special Rapporteur on freedom of expression of the Inter-American Commission for
Human Rights

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above. In particular, we would like to refer to article 19 of the International Covenant on Civil and Political Rights (ICCPR), ratified by the United States in 1992, which provides for the right to freedom of opinion and expression, and to article IV of the 1948 American Declaration of the Rights and Duties of Man, which provides for the right to freedom of investigation, opinion, expression and dissemination.

We would like to make reference to the Human Rights Committee's General Comment 34, which indicates that "*A free, uncensored and unhindered press or other media is essential in any society to ensure freedom of opinion and expression and the enjoyment of other Covenant rights. It constitutes one of the cornerstones of a democratic society*". The Committee has observed that "*circumstances of public debate concerning public figures in the political domain and public institutions, the value placed by the Covenant upon uninhibited expression is particularly high*".

We also refer to the Joint Declaration on Freedom of Expression and "Fake News", Disinformation and Propaganda, adopted on 3 March 2017, by ourselves and the Representative on the Freedom of the Media of the Organization of Security and Cooperation in Europe and the Special Rapporteur on Freedom of Expression for the African Commission of Human and People's Rights. In that Declaration, alarm was expressed at "*instances in which public authorities denigrate, intimidate and threaten the media, including by stating that the media is "the opposition" or is "lying" and has a hidden political agenda, which increases the risk of threats and violence against journalists, undermines public trust and confidence in journalism as a public watchdog, and may mislead the public by blurring the lines between disinformation and media products containing independently verifiable facts.*"

Furthermore, the Inter-American Commission on Human Rights (IACHR) has repeatedly asserted the importance of creating an enabling environment for the exercise of freedom of expression, as one of the fundamental conditions in any democratic society. Accordingly, IACHR has affirmed that States must abstain from engaging in actions that may in any way be aimed, directly or indirectly, at creating situations in which journalists are put at risk or media outlets' capacity to operate independently is undermined. Particularly, IACHR has stressed that high government officials must abstain from making public statements that stigmatize and intimidate journalists and media outlets which are critical of the government or create an environment of intimidation and self-censorship that gravely affects freedom of expression in the country. The IACHR has exhorted State authorities to contribute decisively to building an environment of tolerance and respect in which all individuals can express their thoughts and opinions without fear of being attacked, punished, or stigmatized for them.

Also, inter-American human rights standards prohibit the States from making decisions with respect to broadcasting based on a media's news coverage or editorial line (See, report "Freedom of expression standards for free and inclusive broadcasting", OEA/Ser.L/V/II CIDH/RELE/INF.3/09.30 December 2009). In that regard, as stated by Principle 13 of the IACHR's Declaration of Principles on Freedom of Expression, "[t]he exercise of power (...) by the state (...) (in) the concession of radio and television broadcast frequencies, among others, with the intent to put pressure on and punish or reward and provide privileges to social communicators and communications media because of the opinions they express threaten freedom of expression, and must be explicitly prohibited by law."

In sum, as the IACHR has reiterated, the State must in all cases abstain from using any of its powers to reward friendly media and those who dissent or criticize its actions. Government authorities must respond to criticism that they find biased or inaccurate, by creating the conditions for more and better information rather than with measures that could inhibit and damage democratic deliberation.