

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

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Minister Counselor Allegra,

I have the honour to address you in my capacity 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.

In this connection, I would like to bring to the attention of the United States Government information I have received concerning **the designation of T&R Productions and Russia Today America as a foreign agents under the Foreign Agent Registration Act.**

T&R Productions is the partner company of Russia Today America (RT America), a Russian state-funded network. T&R Productions is the production company that provides all services for the RT America channel, including television production and operations.

According to the information received:

On 6 January 2017, the Office of the US Government's Director of National Intelligence concluded in an Intelligence Community Assessment that Russia Today America (RT) was part of Russia's state-run "propaganda machine" that contributed to a campaign seeking to "influence" the 2016 Presidential elections "by serving as a platform for Kremlin messaging to Russian and international audiences".

In September 2017, T&R Productions received a letter from the Department of Justice stating that it is obliged to register as a "foreign agent" under the Foreign Agents Registration Act, 22 U.S.C. § 611 *et seq.*

On 8 November 2017, RT America registered as "foreign agent" under the Foreign Agents Registration Act.

On 9 November 2017, RT America announced that T&R will comply with the order by the Department of Justice, but that it will challenge the order in court.

On 13 November 2017, T&R Productions filed for registration under the Foreign Agents Registration Act.

Under Section 4 of the Foreign Agents Registration Act, registered "foreign agents" are required to include a public disclaimer on any "informational materials" that they send out and must also file a version with the Department of

Justice within 48 hours of transmission. Section 4 also requires registered “foreign agents” to disclose contact with any agency or official of the US Government or any US media.

On 29 November 2017, the Radio-Television Correspondents’ Galleries, citing the “foreign agent” status, revoked RT America’s credentials to access the United States Congress.

Before addressing concerns with these allegations, I wish to stress the US Government’s obligation to respect and protect the right to freedom of opinion and expression under Article 19 of the International Covenant on Civil and Political Rights (ICCPR), ratified by the United States on 8 June 1992.

In particular, Article 19(2) of the ICCPR protects the right to seek, receive and impart information of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice”. The Human Rights Committee has in this regard stated 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”. The right applies to “everyone”. Accordingly, foreign journalists and media outlets working in the United States are entitled to the same guarantees of freedom of expression under Article 19(2).

Under Article 19(3) of the ICCPR, restrictions on the right to freedom of expression must meet a three-part test. That is, restrictions must be “provided by law”, and necessary for “respect of the rights or reputations of others” or “for the protection of national security or of public order (ordre public), or of public health and morals”. As emphasized by the Human Rights Committee, the “penalization of a media outlet, publishers or journalists solely for being critical of the government or the political system (...) can never be considered to be a necessary restriction of freedom of expression” (CCPR/C/GC/34). The Human Rights Committee also emphasized that “general State systems of registration or licensing of journalists are incompatible with paragraph 3”. While “[l]imited accreditation schemes are permissible ... where necessary to provide journalists with privileged access to certain places and/or events”, such schemes “should be applied in a manner that is nondiscriminatory and compatible with article 19 and other provisions of the Covenant, based on objective criteria and taking into account that journalism is a function shared by a wide range of actors” (CCPR/C/GC/34).

The full texts of the human rights instruments and standards outlined above are available on www.ohchr.org and can also be provided upon request.

Without prejudice to the accuracy of these allegations or the facts upon which they may be based, and based on the international human rights standards outlined above, I am concerned that the registration of RT America and T&R Productions as “foreign agent”, may unduly interfere with the right to seek, receive, and impart information under Article 19(2) of the ICCPR. While governments clearly have a legitimate interest in countering foreign interference with electoral processes, the designation of RT America

and T&R Productions as a “foreign agent” imposes labeling and reporting requirements that may unduly hamper their capacity to conduct journalism and provide news coverage. For example, in the absence of a clear and meaningful definition of “informational materials”, Section 4 of the Foreign Agents Registration Act potentially requires RT America and T&R Productions to include public disclaimers in all their social media posts – a burden that is “unrealistic”, particularly in a fast-paced media environment. Requiring RT America and T&R Productions to disclose contact with US Government officials and US media will make it difficult for the organization to conduct confidential reporting. Restrictions on their ability to access Congressional and other governmental proceedings will further hamper their capacity to provide relevant news coverage and information in the public interest. Accordingly, the cumulative effect of these restrictions on RT America and T&R Productions may be more intrusive than necessary to protect any asserted aim.

Public information readily available indicates that RT America and T&R Productions have strong connections to, and are funded by, the Government of the Russian Federation. Nonetheless, the designation of media outlets as “foreign agent”- in these cases and beyond- may effectively grant the US Government broad discretion to assess the legitimacy of controversial reporting and impose regulatory measures accordingly. Such discretion would be incompatible with the limitations criteria under Article 19(3) of the ICCPR, which may not be invoked to penalize media outlets for being controversial or critical of the government. Such discretion may also be incompatible with the legality requirement under Article 19(3), which requires restrictions on freedom of expression to provide sufficient precision to guide those charged with their execution. The exercise of such discretion may set a precedent that may be prone to abuse and threaten the work of journalists. Indeed, in order to impose requirements that constitute restrictions on freedom of expression, the Government must demonstrate their necessity in order to protect a legitimate interest, which have not been clearly shown as of yet in these cases.

As it is my responsibility, under the mandate provided to me by the Human Rights Council to seek to clarify all cases brought to my attention, I would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and comment you may have on the above-mentioned allegations.
2. Please explain how the designation of T&R Productions and RT America as “foreign agent” is compatible with the US Government’s obligation to respect and promote freedom of expression under article 19 of the ICCPR.

I would appreciate receiving a response within 60 days. Your Government’s response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of my highest consideration.

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