

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

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Excellency,

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 and Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Human Rights Council resolutions 34/18 and 31/3.

Concerns about undue restrictions on civil society through the application of the Foreign Agents Law formed the subject of several communications by Special Procedures Mandate Holders, sent on 11 July 2012 (RUS 5/2012); 13 June 2013 (RUS 3/2013); 18 December 2013 (RUS 13/2013); 20 June 2014 (RUS 5/2014); 14 November 2014 (RUS 9/2014); 7 August 2015 (RUS 4/2015); 25 February 2016 (RUS 2/2016); 14 April 2016 (RUS 4/2016). We thank your Excellency's Government for the replies received to the above communications on 23 July 2012; 12 February 2014; 25 August 2014; 17 December 2014; 16 November 2015; 23 May 2016 and 31 May 2016.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the enactment and subsequent proposed amendments to the Foreign Agents Media Law, which raises serious concerns about press freedom and the right to access information in Russia.

According to the information received:

The Foreign Agents Media Law

On 22 November 2017, the Council of the Federation (High Chamber of the Russian Parliament), approved the passage of the Federal Law Amending articles 10.4 and 15.3 of the Federal Law "On Information, Information Technologies and Information Protection" and article 6 of the Law "On Mass Media", collectively referred to as the "Foreign Agents Media Law".

On 25 November 2017, the President signed the Foreign Agents Media Law, which came into effect immediately.

The Foreign Agents Media Law stipulates that any "legal entity registered in a foreign state or foreign structure without legal entity, distributing (...) printed, audio, audiovisual and other materials (...) can be recognized as foreign media

performing the functions of foreign agent (...) if it receives financial and (or) other resources from foreign states, their institutions, international and foreign organizations, foreign citizens and persons without citizenship (...) or Russian citizens who receive financial and (or) other resources from above-mentioned sources”.

Under the law, media organizations recognized as “foreign agents” will be required to, *inter alia*, register as “foreign agents” and to mark all of their publications as being produced by a “foreign agent”.

The Foreign Agents Media Law also permits authorities to suspend the activities of an organization that “performs functions of a foreign agent” but fails to register as one. The Administrative and Criminal Codes have been amended in order to introduce sanctions for organizations and their leaders who fail to comply with the new legislation.

Additionally, the Foreign Agents Media Law authorizes the extrajudicial blocking of any website or personal page containing “appeals to mass riots, extremist activity or participation in mass (public) events organized in violation of legal procedure or publications of foreign or international non-governmental organizations whose activity is recognized as undesirable on the territory of the Russian Federation”.

It has been reported that the expansion of the Foreign Agents Media Law is a response to the United States Congress’s request that Russian TV Network RT register its American arms as a foreign agent within the United States under the 1938 Foreign Agents Registration Act (“FARA”).

In the period between the enactment of the law and 5 December 2017, nine media outlets have reportedly been labeled “Foreign Agents” under the law.

As a result of this “Foreign Agent” classification, two of the media outlets have allegedly been banned from entering the Russian Federation’s Lower House of Parliament and may be banned from entering the Upper House.

Proposed Expansion of the Foreign Agents Media Law

On 12 January 2018, the Parliament approved a bill that would authorize the Justice Ministry to designate individual journalists and media outlets as “foreign agents” if they are deemed to perform the functions of a media outlet and receive funding directly or indirectly from foreign State sources.

Under the proposed bill, designated individuals and entities will have to comply with the registration and labeling requirements under the Foreign Agents Media Law. Third parties sharing their work on social media and other online networks will also be required to label the information shared as being from a “foreign agent”.

Before explaining our concerns, we would like to reiterate your Excellency's 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 Russian Federation on 16 October 1973.

Article 19(2) of the ICCPR provides that "[everyone] shall have the right to freedom of expression; this right shall include the freedom to seek, receive and impart information and ideas 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". This includes an obligation on State Parties, as interpreted by the Human Rights Committee in General Comment No.34, to ensure a "free, uncensored and unhindered" press, which is essential to the public's enjoyment of the right to seek, receive and impart information and the enjoyment of other Covenant rights. The right to freedom of expression applies to "everyone". Accordingly, foreign journalists and media outlets working in Russia are entitled to the same guarantees of freedom of expression under Article 19(2).

The right to freedom of expression may only be restricted if the high threshold established by Article 19(3) is met. Article 19(3) states that restrictions must be provided by law, and necessary for the protection of "the rights or reputations of others", of "national security or of public order (ordre public), or of public health or morals". The Human Rights Committee has stipulated that these restrictions must be "the least intrusive instrument" among those which might achieve the desired result and must be "proportionate to the interest to be protected." The penalization of a media outlet, publishers or journalists solely for being critical of the government can never be considered to be a necessary restriction of freedom of expression (CCPR/C/GC/34).

Based on these standards, we are concerned that neither the Foreign Agents Media Law nor its proposed amendments are consistent with the criteria for restrictions under Article 19(3) of the ICCPR. We are concerned that the overbroad language in the amendment and in the law as it currently reads provide broad discretion to restrict media sources. The labeling requirements asking designated media outlets and journalists to label every piece of content they disseminate will significantly limit their ability to disseminate information and news coverage in a timely and effective manner in a fast-paced media environment. Extending these requirements to information sharing on social media will also make it difficult for the public to exchange and discuss information disseminated by foreign or alternative media sources. These requirements will substantially limit the diversity of media sources in a manner that is disproportionate to any legitimate aim.

Furthermore, we are concerned that designated media outlets have been banned from visiting the Parliament, limiting their ability to report on the proceedings of a critical legislative body in Russia. Like the labeling requirements, we are concerned that these restrictions unnecessarily hamper the capacity of these media outlets to provide relevant news coverage and information in the public interest to the public.

With regard to the extrajudicial blocking of any website or personal page containing extremist and other activity listed in the law, we respectfully remind your Excellency's Government of the relevant provisions of the United Nations Security Council resolutions 1373 (2001), 1456(2003), 1624 (2005), 2178 (2014), 2341 (2017), 2354 (2017), 2368 (2017) and 2370 (2017); as well as Human Rights Council resolution 35/34 and General Assembly resolution 49/60, 51/210, 72/123 and 72/180. All these resolutions require that States must ensure that any measures taken to combat terrorism and violent extremism, including incitement of and support for terrorist acts, comply with all of their obligations under international law, in particular international human rights law, refugee law, and humanitarian law.

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

1. Please provide any additional information and comments you may have on the above-mentioned allegations.
2. Please provide details about the application of the Foreign Agents Media Law in relation to the nine media outlets that reportedly have been labelled as "foreign agents".
3. Please provide how the Foreign Agents Media Law is consistent with Article 19(3) of the ICCPR.
4. Please explain how the proposed extension of the Foreign Agents Media Law to include individuals and third parties who share information originating from designated foreign agents is consistent with Article 19(3) of the ICCPR.
5. Please provide detailed information about measures taken to revise counter terrorism, violent extremism and security related legislation, including rules and procedures related to the imposition of restrictions on internet sites, as well as protection of fundamental freedoms of opinion and its expression, and peaceful assembly and association in line with international human rights standards, in particular with articles 19, 20 and 21 of ICCPR, as well as with the United Nations Security Council resolutions 1373 (2001), 1456(2003), 1624 (2005), 2178 (2014), 2341 (2017), 2354 (2017), 2368 (2017) and 2370 (2017); as well as Human Rights Council resolution 35/34 and General Assembly resolutions 49/60, 51/210, 72/123 and 72/180.
6. Please explain in details about how the definition and enforcement of the concept of "extremism" in domestic legislation comports with the concept of "violent extremism" embedded in the aforementioned United Nations Security Council, General Assembly and Human Rights Council

resolutions, as well as how it complies with the international human rights norms and standards, in particular, with articles 19 and 20 of ICCPR.

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

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Finally, we would like to inform your Excellency's Government that this communication, as a comment on pending or recently adopted legislation, regulations or policies, will be made available to the public and posted on the website page for the mandate of the Special Rapporteur on the right to freedom of expression: <http://www.ohchr.org/EN/Issues/FreedomOpinion/Pages/LegislationAndPolicy.aspx>.

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

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

Fionnuala Ní Aoláin

Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism