



UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER

Impact of Counter-Terrorism and Criminal Laws on Media Freedom and Safety of Journalists

MEDIA FREEDOM AND THE RIGHT TO FREEDOM OF EXPRESSION

The right to freedom of expression is a necessary condition for the realization of the principles of transparency and accountability that are, in turn, essential for the promotion and protection of human rights. It constitutes the foundation stone for every free and democratic society, and is essential for the attainment of sustainable economic development. The right to freedom of expression is recognised notably in the Universal Declaration on Human Rights, the International Covenant on Civil and Political Rights, the main regional human rights treaties, and in the constitutions of most countries.

“

“Without freedom of the press, there are no real democratic societies. Without freedom of the press, there is no freedom.”

– António Guterres, Secretary General of the United Nations (SG/SM/21254)

The media is key in realising the exercise of the right to freedom of expression, which is essential in any democratic society; and the public have a right to receive media output. The role of the media includes reporting on, documenting or publishing information about terrorist acts or counter-terrorism measures and other matters of public interest. Journalists and media workers can play a role in scrutinizing governments, report on political or social issues perceived sensitive or disturbing by the government, and draw attention to the most marginalised groups. However, at times, this has come at a significant cost. Counter terrorism and criminal laws have long been used to punish journalists and suppress media freedom.

In carrying out their duty to protect all individuals within their jurisdiction from acts of terrorism and safeguard national security, States must abide by their human rights law obligations and protect the right to freedom of expression and media freedom. Under international law, restrictions on the right to freedom of expression may only be imposed when they pursue a legitimate aim, such as the protection of national security and public order, when they are provided by law and when the measure is necessary and proportionate. Counter-terrorism laws and criminal laws that restrict freedom of expression must abide by these requirements.

Photos by Unsplash: Vanilla Bear Films



— RESTRICTIVE LEGAL FRAMEWORK AND MEDIA FREEDOM

Counter-terrorism laws and other laws that protect national security form an important part of the legal and regulatory framework of the State. In practice, however, there are instances where these laws are framed and applied in a manner that may violate media freedoms and threaten the safety of journalists. The application of these frameworks may result, among other things in the detention and prosecution of journalists, the prohibition of media content, and the imposition of other restrictions such as internet shutdowns. Journalists can be associated with terrorist groups that they report on; and sometimes counter- terrorism offences are so vague and broadly drafted that they encompass legitimate reporting activities.

Attempts to silence journalists and media workers have included the use of counter-terrorism legislation and extensive national security legislation to criminalize journalism and legitimate expression. This has contributed to an overall decline in media freedom, affecting approximately 85 percent of the global population, as reported by UNESCO.

“

“Security-related measures taken by States, including the adoption of national counter-terrorism legislation, have resulted in violations of the right to freedom of opinion and expression and have directly affected the work of media professionals, human rights defenders, political groups and civil society more broadly”

– Report of the United Nations High Commissioner for Human Rights (A/HRC/34/30)

COUNTER-TERRORISM LAWS

In recent decades, many States have adopted new counter-terrorism laws or strengthened existing ones that provide for an overly broad definition of terrorism, increasing the risk of abuse by law enforcement and other officials. Broad and vaguely worded counter-terrorism laws can lead to the criminalization of the exercise of rights, including the legitimate exercise of the right to freedom of expression.

The High Commissioner for Human Rights and United Nations human rights mechanisms have raised persistent concerns relating to national counter-terrorism legislation which fails to define terrorism-related offences or defines such offences in a vague fashion. They have consistently recommended that States review their counter-terrorism legislation in order to clarify and narrow the definition of the offences concerned. Pending the adoption of an internationally agreed definition of acts of terrorism in international law, Security Council resolution 1566 (2004) and the model definition developed by the Special Rapporteur on counter-terrorism and human rights provide guidance on the cumulative conditions for acts to qualify as terrorism.

“

“Many States have adopted laws that loosely invoke national security, national interest or public order as all-encompassing categories that often include any act criminalized solely through the subjective lens of the impact that it may have, including those “affecting national security, political and social stability” and “dangerous to the political, economic or social system”. Many activities of civil society organizations, human rights defenders, journalists, bloggers and political opponents will fall under such laws, whose main objective is to criminalize legitimate expressions of opinion and thought.”

– United Nations Special Rapporteur on Counter-Terrorism and Human Rights (A/HRC/40/52)





— SEDITION, DEFAMATION, INSULT AND CYBERSECURITY LAWS

The offences of sedition, defamation, and insult hark back to an era when the criminal law was used to suppress voices who criticised those in power. In many countries, they are still frequently used against journalists and others who are critical of government policies or of individual members of government. The UN Human Rights Committee has highlighted the limited permissibility of criminalizing defamation and insult, emphasizing that “the mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties”.

In a number of States, cybercrime laws have been introduced, which allow for prosecuting long-standing problematic offline offences – which generally do not meet the threshold for criminal offences under international human rights law, such as criminal defamation – when posted in an online environment. In effect, cybersecurity and cybercrime laws are used to criminalize online

“

“Laws – from sedition to censorship – have long been used to punish journalists and suppress media freedom. That practice has been revived by some States with a new ferocity in the digital age.”

– United Nations Special Rapporteur on Freedom of Opinion and Expression (A/HRC/50/29)

speech and content, including defamation and hate speech, often with enhanced penalties. These laws can lead to overly broad restrictions on freedom of expression, surveillance, and data collection without due regard for privacy and due process.

— ARREST, DETENTIONS, AND PROSECUTIONS

Counter-terrorism and criminal laws have been used to criminalize the legitimate work of journalists, leading to their arrests and detention, prosecution or the threat of prosecutions. In a number of countries, journalists have been detained merely for expressing criticism of state or local authorities, with limited judicial oversight. This has a significant chilling effect on the exercise of the right to freedom of expression by other media workers and civil society actors at large.

“

“Many media workers have been subjected to harassment, intimidation, arbitrary detention and violent attacks – including killings – because of the work they do to inform us all.”

– Former High Commissioner Michelle Bachelet, Human Rights Day 2021

RECOMMENDATIONS TO STATES

States should:

- Enable journalists to perform their work unhindered, by reviewing counter-terrorism and criminal laws to ensure their compliance with international human rights law, taking into account not only the impact of separate legislation but also the cumulative impact of several criminal and counter-terrorism laws combined on the enjoyment of human rights;
- Where necessary, amend or repeal laws that impede the legitimate exercise of human rights, including the ability of journalists to perform their work;
- Ensure that counter-terrorism laws are precise and sufficiently narrow so as to ensure the predictability of what type of conduct is criminalized;
- Ensure that any measure that restrict journalists’ right to freedom of expression, including in the context of counter-terrorism and national security, pursue a legitimate aim, are provided by law, are necessary and proportionate, and non-discriminatory;
- Repeal criminal defamation, insult, seditious libel, and other laws that criminalize criticism of State policies, institutions, or officials;
- Safeguard journalists’ online safety by ensuring that any approach to cybercrime and cybersecurity has a narrow focus that is limited to offences inherent to cyberspace;



Photos by pxfuel

- Ensure the ability of journalists to gather, report and disseminate information online by refraining from imposing the full range of internet shutdowns, as such measures are inherently disproportionate;
- Ensure that no journalist or media worker is detained for the legitimate exercise of their right to freedom of expression or for their journalistic work. Detentions must always be necessary, reasonable and proportionate, and subject to prompt and effective judicial oversight;
- Protect journalists from legal threats by ensuring that the judicial system is used on national security grounds against journalists and others merely for the legitimate exercise of their right to freedom of expression;
- Ensure that journalists and media workers whose human rights have been violated, including in the course of any action to counter terrorism, are provided with access to effective remedies and reparation.

REFERENCES

Reports

- OHCHR Study on the impact of counter-terrorism and other criminal laws on media freedom and safety of journalists, 2023
- Report of the Secretary General; Terrorism and human rights - section B. Civic space and counter-terrorism ([A/78/269](#))
- Report of the Secretary General on the safety of journalists and the issue of impunity ([A/78/270](#))
- Annual report of the United Nations High Commissioner for Human Rights: Safety of journalists ([A/HRC/49/40](#))
- [Internet shutdowns: trends, causes, legal implications and impacts on a range of human rights - Report of the Office of the United Nations High Commissioner for Human Rights \(A/HRC/50/55\)](#)
- [Global Study on the Impact of Counter-Terrorism Measures on Civil Society and Civic Space: Report by Special Rapporteur on the promotion and protection of human rights and fundamental freedoms](#)
- Impact of measures to address terrorism and violent extremism on civic space and the rights of civil society actors and human rights defenders; Report by Special Rapporteur on the promotion and protection of human rights and fundamental freedoms ([A/HRC/40/52](#))

- Sustainable development and freedom of expression: why voice matters; Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression ([A/HRC/53/25](#))
- Reinforcing media freedom and the safety of journalists in the digital age: Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression ([A/HRC/50/29](#))

Briefers

- [Briefer on self-protection measures to respond to threats to journalists](#)
- [Briefer on How international human rights standards and mechanisms help protect journalists](#)
- [Briefer: Human rights and elections for journalists](#)
- [Briefer on Human Rights in the Context of Protests for Journalists](#)
- [Briefer: Global Drive for Media Freedom, Access to Information and the Safety of Journalists](#)
- [Briefer on civic space and counter-terrorism](#)



Photos by Wikimedia Commons





UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER

November 2023

Palais des Nations,
CH-1211 Geneva 10, Switzerland
www.ohchr.org