
OHCHR STUDY



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**THE IMPACT OF
COUNTER-TERRORISM AND
OTHER CRIMINAL LEGISLATION
ON MEDIA FREEDOM AND
THE SAFETY OF JOURNALISTS**

November 2023

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Terrorism is one of the most serious threats to peace and security; one that impairs the enjoyment of human rights, threatens social and economic development; and undermines global stability and prosperity. The Security Council, in its resolution 1566, called on all States to prevent “criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act”.¹

States have adopted and implemented counter-terrorism laws that criminalise a range of terrorism-related offences. In addition, they have developed other criminal laws, such as treason, sedition, and cyber-crimes laws, sometimes as necessary measures for the protection of national security. Other criminal laws such as defamation and insult have been implemented also as a measure to respect the reputation of others. In practice, however, there are recurring instances where these criminal laws are designed and applied in a manner that may violate media freedom and affect the work and activities of media workers, human rights defenders, political groups and civil society more broadly. Moreover, in some States, counter-terrorism, national security and public order justifications have been invoked to prosecute journalists and media workers or shut down communications services. Such measures also aim at silencing dissenting voices. This contributes to global context in which media freedom has witnessed a significant decline, with UNESCO reporting that

¹ Resolution 1566, Threats to international peace and security caused by terrorist acts, 8 October 2004, UN Doc. S/RES/1566.

approximately 85 percent of the global population has experienced a decline in press freedom in their country between 2016 and the end of 2020.²

The present study endeavours to foster a deeper understanding of these trends and practices. It examines the detrimental consequences that some counter-terrorism³ and other criminal laws and their application can have on the enjoyment of human rights. The study analyses how both sets of laws – counter-terrorism laws and other criminal laws – can be designed and applied in a manner that unduly restricts the right to freedom of expression and other human rights, including media freedom, and negatively affect the safety of journalists.⁴ This may include the arbitrary and/or unlawful arrest and detention of journalists, the prohibition of media content, and the imposition of other restrictions such as internet shutdowns.

The study and recommendations draw on the experience of countries where the use of counter-terrorism and other criminal laws against journalists and media workers has been documented by UN human rights mechanisms. Its aim is twofold:

- to document different ways in which counter-terrorism and other criminal laws impact on the exercise of the right to freedom of expression and other human rights by journalists; and
- to provide recommendations on how to minimise or avoid the negative impact of such laws.

The study is divided into three substantive parts. The first substantive part⁵ presents the international legal

framework relevant to this study, particularly focusing on the principle of legality, the right to freedom of expression, and the right to liberty and security of person, noting however that other rights of journalists and media workers could be affected as a result of the implementation of terrorism-related offences and other criminal laws, however this falls outside the scope of the present study. The second substantive part⁶ maps recurrent human rights concerns related to the implementation of counter-terrorism laws, especially in relation to vague or broad criminal offences and enhanced law enforcement powers to arrest and detain in the context of countering terrorism. The third substantive part⁷ discusses the impact of other criminal laws on the safety of journalists and media freedom, namely sedition and treason, defamation and insult, as well as cybercrime legislation. The study does not attempt to map all criminal legislation that could affect the safety of journalists or media freedom, instead it focuses on common practices related to restrictions on media freedom through the use of national criminal legislation. The study ends with conclusions and recommendations.

The study was undertaken by OHCHR in 2022 as part of its efforts under the Global Drive for Media Freedom, Access to Information and the Safety of Journalists. The Global Drive is a collaborative initiative between OHCHR and UNESCO, generously funded by the Kingdom of the Netherlands. It has a twofold objective: (i) to foster an independent and free media and public recognition of the value of access to information; and (ii) to strengthen the protection and accountability for violations against journalists.

² World Trends in Freedom of Expression and Media Development: Global Report 2021/2022: <https://www.unesco.org/reports/world-media-trends/2021/en>.

³ For the purposes of this study, counter-terrorism laws are understood as laws and regulations that use the word “terrorism” or “terrorist” in their title, or legal provisions that explicitly define or refer to certain acts or conduct as “terrorist” acts or “terrorist” conduct.

⁴ In line with international standards and good practice, this study uses a wide definition of ‘media’ and ‘journalist’, including all media workers and

support staff, as well as community media workers and so-called ‘citizen journalists’ and bloggers, and regardless of whether they publish in print, broadcast media or online. See, amongst others, UN Plan of Action on the Safety of Journalists and the Issue of Impunity, 12 April 2012, CI-12/CONF.202/6; UN Human Rights Committee General Comment 34, CCPR/C/GC/34; and A/HRC/20/17.

⁵ Section III

⁶ Section IV

⁷ Section V

2 INTRODUCTION

01 | This study examines the impact that some counter-terrorism and criminal laws mainly aiming to safeguard national security and public order or to respect the reputation of others, have on media freedom and the safety of journalists. It describes practices in several States and regions, and presents findings and recommendations made by UN human rights mechanisms on their compliance with the right to freedom of expression and related rights. The study identifies challenges in the application of counter-terrorism and criminal laws that result in a serious adverse effect on media freedom and the safety of journalists in many States. The study presents a set of recommendations to States regarding the adoption and implementation of counter-terrorism and other criminal laws in a manner that does not result in undue restrictions on the right to freedom of expression and media freedom.



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INTERNATIONAL LEGAL FRAMEWORK AND STANDARDS

02 | The right to freedom of expression is recognized amongst others in the Universal Declaration on Human Rights, the International Covenant on Civil and Political Rights (ICCPR), other international human rights instruments, including regional ones, and – articulated in different ways – in the constitutions of most States.⁸ Free media is essential to ensure the rights to freedom of opinion and expression and the enjoyment of other rights protected by ICCPR as well as by other international instruments. The right to freedom of expression and the safety of journalists are also important to society as a whole including for its sustainable economic development, and are included as indicators in the UN Sustainable Development Goals.⁹

03 | Journalists are often subjected to threats, intimidation and attacks because of their activities.¹⁰ International human rights law imposes certain positive obligations States.¹¹ These obligations will only be fully discharged if individuals are protected by the State, not just against violations of rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of rights.¹² States take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities. Any such investigations and prosecutions should be prompt and effective, and be carried out by an independent authority.¹³ Recent UN

General Assembly and UN Human Rights Council resolutions¹⁴ have called for effective protections for women journalists and media workers, who are exposed to particularly serious attacks both physically and online, including from politicians and public officials.¹⁵

04 | States should moreover put in place effective measures to protect individuals against attacks aimed at silencing those exercising their right to freedom of expression.¹⁶ The Human Rights Committee has emphasized that States must take special measures of protection for persons, including journalists, who are in a situation of vulnerability because of specific threats or because of pre-existing patterns of violence.¹⁷

05 | States should also ensure that their criminal laws and their applications do not unduly restrict the right to freedom of expression or any other human rights relevant for journalistic work. Nor do they undermine conditions for an environment conducive for free media and safety of journalists. When necessary, laws (such as overly vague or restrictive counter-terrorism laws) should be reformed or repealed, and an effective justice framework should be in place that ensures that any threats or acts of violence are promptly investigated and that signals that there will be no impunity for violence against journalists.¹⁸

8 Universal Declaration on Human Rights, Article 19; International Covenant on Civil and Political Rights, Article 19; International Convention on the Rights of the Child, Article 13; Convention for the Protection of Human Rights and Fundamental Freedoms, Article 13; African Charter on Human and Peoples' Rights, Article 9; ASEAN Human Rights Declaration, Article 23. For constitutional protections, see, amongst others, E. Barendt, *Freedom of Speech*, OUP 2007; R. Dixon, T. Ginsburg, L. Spitz (eds.), *Comparative Constitutional Law in Asia*, EEP 2014.

9 Indicators 16.10.1 and 16.10.2 require States to report on the safety of journalists and on public access to information (see <https://unstats.un.org/sdgs/>).

10 CCPR, General Comment no. 34 (2011), para. 23

11 CCPR, General Comment no. 31 (2004), para. 6.

12 *Ibid.* para. 8.

13 Paras. 27, 28 of General Comment 36. For specific requirements, see Joint declaration on crimes against freedom of expression by the

UN Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe Representative on Freedom of the Media, the Organization of American States Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples' Rights Special Rapporteur on Freedom of Expression and Access to Information, presented on 25 June 2012.

14 E.g. A/HRC/RES/51/9 preambular part and OP 3, 8, and 11(p) and A/RES/76/173, preambular part and paras 2, 10, 11, and 12(b and g)

15 Many examples are summarised in the 2020 report of the UN Special Rapporteur on Violence against Women, Combating violence against women journalists, 6 May 2020, UN Doc. A/HRC/44/52.

16 UN Human Rights Committee, General Comment 34, para. 23.

17 UN Human Rights Committee, General Comment 36, UN Doc. CCPR/C/GC/36, 3 September 2019, para 23.

18 Human Rights Council Resolution 45/18.

THE PRINCIPLE OF LEGALITY

06 | States have legal obligations to prevent and protect their populations from acts of terrorism, including through the adoption of protective legal frameworks. States also have obligations to ensure that laws adopted comply with the requirements placed on the State under international law. International human rights law provides for two requirements with respect to the form of criminal laws, and the basis on which the restriction of certain human rights can be made: (1) the principle of legality in criminal law, and (2) the requirement that restrictions to rights be provided by law.



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07 | The principle of legality in criminal law is recognised in global and regional human rights treaties.¹⁹ The principle covers several elements, including the non-retroactivity of criminal law, the principle of certainty of criminal law.²⁰ The principle of certainty not only imposes requirements of clarity of the law, but also with respect to the foreseeability of judicial interpretation of the offence and the penalty.²¹ The second guarantee in international human rights law is that rights restrictions must be provided by law. This means that the basis for restriction must be accessible. This requirement applies beyond criminal law provisions, and is applicable to any restriction to human rights.

THE RIGHT TO FREEDOM OF EXPRESSION

08 | The ICCPR recognizes the right to freedom of expression for the media to receive information, comment on public issues without censorship, and inform public opinion. It also acknowledges the public's right to receive media output.²² States Parties are prohibited from acting in a way that violates or unlawfully restricts rights and freedoms that are guaranteed by the Covenant, and must adopt legislative and other measures to ensure the enjoyment of the right to freedom of expression, including the right of individuals and media professionals to seek, receive, and impart information and ideas through various forms of media, including print, broadcast, online platforms, and social media.

09 | As the UN Human Rights Committee has emphasized, the right to freedom of expression is "essential for any society": it constitutes the "foundation stone for every free and democratic society" and 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."²³

10 | The right to freedom of expression has three important components: it consists of a right to "seek", "receive", and "impart" information and ideas. The right to "seek" information includes a right to gather information, including through interviewing people or engaging in research. The right to "receive" information includes the right of the public to receive media output.²⁴ The right to "impart" information is the

¹⁹ See ICCPR art. 15; CRC, Article 40(2)(a) ECHR art. 7; ACHR art. 9; ACHPR art. 7 (2); UDHR art. 11 (2).

²⁰ See e.g. Claus Kieß, *Nulla poena nullum crimen sine lege*, Max Planck Encyclopedia of Public International Law (online edition), available at: <https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e854>; Paul M. Taylor, *A Commentary on the International Covenant on Civil and Political Rights* (CUP 2020),

²¹ [Guide on Article 7 of the European Court of Human Rights](#) (last accessed July 2023), pp. 15 – 17, with further references.

²² CCPR/C/GC/34, para 13.

²³ CCPR/C/GC/34, paragraphs 2, 3.

²⁴ CCPR/C/GC/34, para. 13. See also Mavlonov and Shansiy Sa'di v. Uzbekistan, Communication 1334/2004, 19 March 2009.

act that is usually thought of as the act of “expression”: speaking, writing, or otherwise expressing oneself, through whatever means. The Human Rights Committee has held that taken together, the rights to “seek” and “receive” information encompass a right to access information that is held by public bodies (sometimes referred to as the “right to information”, or “freedom of information”).²⁵ Freedom of expression also protects expression that is critical of governing authorities, expression that may not align with majority views or is unpopular, and even expression that may be regarded as deeply offensive.²⁶

11 | The media play a key part in realizing the enjoyment of the right to freedom of expression. They are a crucial vehicle through which the public receives information on issues of public interest, including by reporting on acts of terrorism: this is a legitimate activity in which journalists should not be unduly restricted.²⁷ A free, uncensored and unhindered press or other media is essential in any society to ensure freedom of opinion and expression.²⁸ As highlighted in the UN Plan of Action on the Safety of Journalists, curtailing the expression of journalists and media workers deprives society as a whole of their journalistic contribution, and may lead to a climate of self-censorship.²⁹ In such a climate, societies suffer because they lack the information needed to fully realize their potential.³⁰ This is as true in the age of social media as it was before the advent of the internet. A wide range of actors engage in journalism, including full-time reporters and analysts, as well as bloggers and others who engage in forms of self-publication in print, on the internet or elsewhere.³¹

12 | The ICCPR provides for restrictions to the right to freedom of expression exceptionally, only when provided for by law and to the extent necessary and proportionate for the protection of national security or of public order, public health or morals, or for respect of the rights or reputations of others.³²

25 CCPR/C/GC/34, paras 18-19; also, *Toktakunov v. Kyrgyzstan*, Communication No. 1470/2006, 28 March 2011, paragraph 6.3.

26 CCPR/C/GC/34, paras. 11, 38, 42 and 43.

27 *Ibid.*, para 46.

28 *Ibid.*, para 13.

29 UN Plan of Action on the Safety of Journalists and the Issue of Impunity.

30 *Ibid.*

31 CCPR/C/GC/34, para. 44.

13 | When restrictions on freedom of expression are imposed there are three cumulative requirements whereby restrictions must:

(a) Be provided by law: restrictions must be provided for by laws or regulations that are formulated with sufficient precision so that an individual may regulate their conduct accordingly. Vaguely worded or overbroad restrictions are not permissible;³³

(b) Pursue a legitimate aim: restrictions must be imposed for the protection of one of the legitimate purposes mentioned in Article 19(3), which includes the protection of national security or of public order; and

(c) Be necessary and proportionate: restrictions must be ‘necessary’ for the protection of that purpose and they must be proportionate: “[restrictions] must be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve their protective function; they must be proportionate to the interest to be protected...”³⁴ The Human Rights Committee has emphasized that proportionality has to be respected in the drafting of legislation as well as “by the administrative and judicial authorities in applying the law.”³⁵

32 See ICCPR, Article 19(3). The UN Human Rights Committee, General Comment 37 (2020) refers to “Public order” as “the sum of the rules that ensure the proper functioning of society, or the set of fundamental principles on which society is founded, which also entails respect for human rights.”, para 44.

33 UN Human Rights Committee General Comment No. 34, para. 25

34 UN Human Rights Committee General Comment No. 27, para 14, as quoted in General Comment No. 34. para. 34.

35 *Ibid.*, para 15, as quoted in General Comment No. 34, para. 34.

14 | In addition, the right to freedom of expression may also be derogated in accordance with article 4 of the ICCPR. The UN Human Rights Committee has clarified that States may only derogate from the right to freedom of expression in situations of “public emergency which threatens the life of the nation”, and following a public declaration of a state of emergency.³⁶ Measures derogating from the provisions of the Covenant must be of an exceptional and temporary nature.³⁷ Provided that these requirements are met, there are three conditions with regard to the derogations that may be imposed: (1) must not go beyond what is “strictly required by the exigencies of the situation”;³⁸ (2) may not contravene any other obligations under international law applicable to the State; and (3) may not discriminate solely on grounds of “race, colour, sex, language, religion or social origin”.³⁹ Yet, measures derogating rights should be avoided when the situation can be adequately dealt with by establishing proportionate restrictions or limitations on certain rights as described in the above paragraphs in relation to article 19 of the ICCPR.⁴⁰

15 | The UN Human Rights Committee has emphasized that States must ensure that counter-terrorism measures are compatible with all requirements under article 19(3) ICCPR.⁴¹ In the context of national security, the requirement of necessity and proportionality means that the right to freedom of expression may only be lawfully restricted to the extent that its free exercise would constitute an actual or likely threat or damage to national security, public order, or to one of the other legitimate aims listed in Article 19(3) ICCPR. The UN Human Rights Committee has emphasized that when States take measures that restrict freedom of expression, such as the enactment of legislation, they “must demonstrate in specific and individualized fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat.”⁴²

16 | Under Article 20 ICCPR, States have a duty to prohibit by law propaganda for war and any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility, or violence.⁴³ Any prohibition against incitement must comply with the requirements for permissible restrictions to rights as explained above: the

limitation must be prescribed by law; be in pursuit of a legitimate purpose; and be both necessary and proportional. The Rabat Plan of Action⁴⁴, endorsed by the Human Rights Council and by UN human rights mechanisms, provides guidance on the criminalization of expression;⁴⁵ its six-point ‘threshold test’ provides a framework to justify the criminalization of advocacy that amounts to incitement and for the application of Article 20 ICCPR.⁴⁶

THE RIGHT TO LIBERTY AND SECURITY OF PERSONS

17 | To ensure that journalists and media workers are able to report without fear of repercussions or retaliation, it is important that States abide by the prohibition against unlawful or arbitrary deprivation of liberty.⁴⁷ ‘Arbitrariness’ includes elements of inappropriateness, injustice, lack of predictability, and shortcomings in the due process of law.⁴⁸ The law on the basis of which individuals are detained must be accessible, understandable, and non-retroactive;

³⁶ Human Rights Committee, General Comment No. 29, states of emergency (article 4), UN Doc. CCPR/C/21/Rev.1/Add.11, 31 August 2001, para 2.

³⁷ *Ibid.*, para. 2.

³⁸ *Ibid.*, paragraphs 4, 5.

³⁹ Article 4 ICCPR; see also the Human Rights Committee’s General Comment No. 29, para. 8.

⁴⁰ OHCHR, Emergency measures and COVID-19: Guidance, https://www.ohchr.org/sites/default/files/Documents/Events/EmergencyMeasures_COVID19.pdf

⁴¹ UN Human Rights Committee General Comment No. 34, para. 46

⁴² *Ibid.*, para 35, 36.

⁴³ See also ICERD art. 4

⁴⁴ A/HRC/22/17/Add.4, Appendix

⁴⁵ See e.g. CERD, General Recommendation No. 35 and A/74/486.

⁴⁶ Office of the High Commissioner for Human Rights, Freedom of expression vs. incitement to hatred: OHCHR and the Rabat Plan of Action, at <https://www.ohchr.org/EN/Issues/FreedomOpinion/Articles19-20/Pages/Index.aspx>

⁴⁷ Article 9 of both the Universal Declaration of Human Rights and of the ICCPR provides that no-one shall be subjected to unlawful or arbitrary arrest or detention.

⁴⁸ UN Working Group on Arbitrary Detention, Deliberation No. 9 concerning the definition and scope of arbitrary deprivation of liberty under customary international law, A /HRC/22/44, para 61, endorsing the findings of the UN Human Rights Committee in *Mukong v. Cameroon*, Communication No. 458/1991, para. 9.8. See also General Comment General No. 35, Article 9 (CCPR/C/GC/35), para 12. The Human Rights Committee has also stated that “in order to avoid a characterization of arbitrariness, detention should not continue beyond the period for which the State party can provide appropriate justification”: *Madani v Algeria*, Communication No. 1172/2003.

and it must be applied consistently, predictably, and in a non-discriminatory manner.⁴⁹ The UN Working Group on Arbitrary Detention has emphasised that “[a]n overly broad statute authorizing automatic and indefinite detention without any standards or review is by implication arbitrary.”⁵⁰

18 | When journalists or media workers suspected of terrorist or other serious offences are detained, such detention must not be prolonged and proceedings should be concluded within a reasonable time.⁵¹ Human rights bodies have expressed concern at widespread use and the length of pre-trial detention in terrorism cases.⁵² This may not only constitute arbitrary deprivation of liberty, but could also conflict with the presumption of innocence.⁵³ The use of pre-trial detention must be the exception, rather than the norm.⁵⁴ Those detained pre-trial are entitled to trial within a reasonable time or to release.⁵⁵ The reasonableness of any delay in bringing the case to trial has to be assessed in the circumstances of each case, taking into account the complexity of the case, the conduct of the accused during the proceeding and the manner in which the matter was dealt with by the executive and judicial authorities.⁵⁶

19 | In the last few decades, States have adopted legislation expanding police powers,⁵⁷ and regimes have emerged allowing for detention outside the context of initiated criminal proceedings, including in administrative or preventive detention for security reasons, and investigative detention.⁵⁸ Under the ICCPR, the grounds for detention must be established by domestic law. The Human Rights Committee has observed, however, that security detention, administrative detention and internment presents severe risks of arbitrary deprivation of liberty. The burden of proof lies on States parties to show that the individual poses such a threat and that it cannot be addressed by alternative measures, and that burden increases with the length of the detention. States must further show that the detention does not last longer than absolutely necessary, that the overall length of possible detention is limited, and that those detained are afforded all applicable judicial guarantees.⁵⁹

20 | The UN Working Group on Arbitrary Detention has warned that such detention under public security legislation for a prolonged period of time without effective judicial oversight is not compatible with international human rights law.⁶⁰



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⁴⁹ A /HRC/22/44, para 62.

⁵⁰ *Ibid.*, para 63.

⁵¹ Article 9 ICCPR, General Comment General No. 35, para. 37.

⁵² CCPR/C/TUR/CO/1 para. 17.

⁵³ ICCPR art. 14 (2); CCPR, General Comment no. 35, para. 37.

⁵⁴ See e.g. ICCPR art. 9 (3), which states that “It shall not be the general rule that persons awaiting trial shall be detained in custody ...”. As noted by the Human Rights Committee, “its use must be based on an individualized determination that it is reasonable and necessary taking into account all circumstances, for such purposes as to prevent flight, interference with evidence or the recurrence of crime. The relevant factors should be specified in law and should not include vague and expansive standards such as “public security”, see CCPR, General Comment no. 35, para. 38.

⁵⁵ The reasonableness of any delay in bringing the case to trial has to be assessed in the circumstances of each case, taking into account the complexity of the case, the conduct of the accused during the proceeding and the manner in which the matter was dealt with by the executive and judicial authorities, see CCPR, General Comment no. 35, para. 37.

⁵⁶ CCPR, General Comment no. 35, para. 37.

⁵⁷ See e.g. CCPR/C/AUS/CO/6 para. 15.

⁵⁸ CTITF Working Group on protecting human rights while countering terrorism, Detention in the Context of Countering Terrorism (Basic Human Rights Reference Guide, 2014), Para. 14.

⁵⁹ CCPR, General Comment no. 35, para. 15. See also UN Working Group on Arbitrary Detention, Deliberation No. 9. A/HRC/22/44, paras 71, 72. See, also, the Human Rights Committee’s findings in Bousroual v. Algeria, Communication No. 992/2001, 30 March 2006, para. 9.6; Bandajevsky v. Belarus, Communication No. 1100/2002, 28 March 2006, para. 10.3; Borisenko v. Hungary, Communication No. 852/1999, 14 October 2002, para. 7.4.

⁶⁰ A /HRC/22/44, paras. 73, 74.

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COUNTER-TERRORISM LAWS AND THEIR IMPACT ON MEDIA FREEDOM AND SAFETY OF JOURNALISTS

21 | In recent decades, many States have adopted counter-terrorism laws or amended existing ones providing for an overly broad definition of terrorism-related offences, increasing the risk of abuse or arbitrary application by law enforcement and other officials. This section addresses the use of counter-terrorism laws that criminalise a range of terrorism-related offences against journalists and media workers, with a specific focus on the broad and vague definitions of such offences in national legislation and the often resulting arbitrary arrest and detention of journalists.

OVERBROAD AND VAGUE DEFINITION OF TERRORISM

22 | The domestic legislation that includes overbroad and vague definitions of terrorism and/or terrorism-related offences often has been applied in a manner that unduly restrict the human rights of journalists among others.⁶¹ The High Commissioner for Human Rights has repeatedly raised concerns relating to domestic counter-terrorism legislation which fails to define terrorism-related offences or that defines such offences in a broad or vague manner, and have consistently recommended that States review their counter-terrorism legislation in order to clarify and narrowly tailor the offences concerned.⁶² Similarly, the UN General Assembly has urged States to ensure that their laws criminalizing acts of terrorism are accessible, formulated with precision, non-discriminatory, non-retroactive and in accordance with international law, including human rights law, with a view to ensuring respect for the principles of legal certainty and legality.⁶³ The 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 characteristics of acts of terrorism.⁶⁴

23 | The UN Special Rapporteur on freedom of opinion and expression has noted that while States must ensure that national security laws are crafted and applied in accordance with the requirements of legality, necessity and proportionality, “common problems with security laws include a lack of clear definitions of key terms, like ‘terrorism’ [...] or the use of vague terms [...] which allow considerable leeway for misuse.”⁶⁵ The UN Special Rapporteur on counter-terrorism and human rights has cautioned about “fundamental challenges to human rights” that follow from overbroad counter-terrorism laws, and referred to the global emergence of overly broad and vague definitions of terrorism as “a defining trend” that can result in the targeting of journalists and human rights abuses.⁶⁶ The UN Special Rapporteur on counter-terrorism and human rights has also emphasized the impact of counter-terrorism laws on media freedom, noting that “[m]any States have legislated counter-terrorism and security provisions preventing reporting on or publicly discussing acts of terrorism, through the criminalization of, inter alia, the publication of news or other material likely to promote terrorism”.⁶⁷ She warned that such measures “seriously limit transparency and the accountability of government officials and security forces for human rights violations perpetrated in the course of countering terrorism, and can have a particularly negative impact on journalists and human rights defenders.”⁶⁸

⁶¹ As highlighted in, amongst others, A/HRC/28/28, p. 8; A/HRC/45/27, p. 5; A/76/273, pp. 5-6.

⁶² E.g. A/HRC/50/49, para 46(a) and A/HRC/28/28, para 22

⁶³ See e.g. UN General Assembly resolution UN. Doc A/RES/72/180, para 5 (a).

⁶⁴ Security Council Resolution 1566 (2004), 8 October 2004, S / RES/1566 (2004); A/HRC/16/51. See also the UN Counter-Terrorism Implementation Task Force’s Basic Human Rights Reference Guide, Conformity of National Counter-Terrorism Legislation with International Human Rights Law, CTITF Publication Series, October 2014.

⁶⁵ A/HRC/50/29, para 56.

⁶⁶ A/HRC/40/52, para 34, see also A/73/361, para 34.

⁶⁷ A/HRC/40/52, para 40.

⁶⁸ *Ibid.*

24 | In a 2021 survey of legislative developments in all Member States, the UN Security Council Counter-Terrorism Committee observed that in States all over the world, the definition of terrorism-related offences was overly broad and could be used to criminalize acts, including non-violent conduct, well beyond those envisaged by international counter-terrorism instruments.⁶⁹

25 | The UN Human Rights Committee has cautioned that “[s]uch offences as ‘encouragement of terrorism’ and ‘extremist activity’ as well as offences of ‘praising’, ‘glorifying’, or ‘justifying’ terrorism, should be clearly defined to ensure that they do not lead to unnecessary or disproportionate interference with freedom of expression”.⁷⁰ The UN Special Rapporteur on counter-terrorism and human rights has noted with concern that, “many laws criminalize, often with a lack of precision, acts that do not amount to incitement because they lack the element of intent and/or of danger that the act will lead to the actual commission of violence.”⁷¹ Such offences raise the concern that forms of expression are criminalized that are neither intended nor likely to lead to violence. The Special Rapporteur has accordingly recommended that States should revise counter-terrorism legislation to make it clear that expression is criminalized only when there is a “reasonable probability that the expression in question would succeed in inciting a terrorist act, thereby establishing a causal link or actual risk of the proscribed result occurring”.⁷² The Special Rapporteur on the right to freedom of peaceful assembly and of association has also alerted against the broad and ambiguous nature of anti-terrorism legislation, cybercrime laws, and other security-related pieces of legislation, which have been misused and instrumentalized by States as tools to suppress and crack down on activists and protesters.⁷³



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26 | Given the risk of arbitrary or discriminatory application by authorities of counter-terrorism legislation that criminalise a range of terrorism-related offences independent oversight is crucial, and counter-terrorism laws should be reviewed on a regular basis to ensure that their use is consistent with international human rights law. The UN Secretary General and the High Commissioner for Human Rights have repeatedly called on States to conduct regular review of such counter-terrorism laws.⁷⁴ In this context, UN human rights mechanisms have expressed their concern with respect to many States across the globe about the use of broad and vague counter-terrorism related offences to stifle speech, especially of journalists and human rights defenders.⁷⁵

⁶⁹ Including in Eastern Africa, Southern Africa, West Africa, Central Africa, Pacific Islands subregion, South East Asia, South Asia, Central Asia, Western Asia, East Asia, North American States, Central America region, South America region, Eastern and Western Europe, South and South-East Europe – see United Nations Security Council Counter-Terrorism Committee, Global survey of the implementation of Security Council resolution 1373 (2001) and other relevant resolutions by Member States, 2021, paras. 83, 100, 107, 133, 186, 210, 250, 293, 332, 366, 393, 422, 500, 543, 591, 619, 666, and 686-688.

⁷⁰ UN Human Rights Committee, General Comment 34, para. 46.

⁷¹ A/HRC/40/52, para 37.

⁷² A/HRC/43/46, para 27; A/HRC/16/51, paras. 29-32.

⁷³ A/HRC/53/38, para 18.

⁷⁴ See e.g. A/74/270, para 66(a); A/HRC/28/28, para 55. See also A/HRC/16/51, para 22.

⁷⁵ E.g. OL IND 7/2020, 6 May 2020; CCPR/C/PAK/CO/1, para 21; OL IKA 7/2021, 9 December 2021; CCPR/C/PHL/CO/5, para 13e; AL VNM 6/2021, 22 November 2021; CCPR/C/EGY/CO/5, para 45; CCPR/C/BGD/CO/1, para 9; CERD/C/TJK/CO/12-13, para 35; CCPR/C/NIC/CO/4, para 15; CCPR/C/TKM/CO/3, para 20; CCPR/C/ETH/CO/2, para 39; CCPR/C/TUN/CO/6, para 31; CCPR/C/BHR/CO/1, para 29; A/HRC/35/28/Add.1, para 71; CERD/C/CHN/CO/14-17, para 36; CCPR/C/ISR/CO/5, para 18; CCPR/C/NER/CO/2, para 14; CCPR/C/LBR/CO/1 para 14; CAT/C/ARE/CO/1, para 17; CCPR/C/FIN/CO/7, para 10; CCPR/C/UZB/CO/5, para 20; CCPR/C/GNQ/CO/1, para 22; CCPR/C/SWZ/CO/1, para 36; CCPR/C/UGA/CO/2, para 16.

DEPRIVATION OF LIBERTY

27 | Journalists and media workers play a role in scrutinizing governments, report on political or social issues that may be perceived as sensitive or disturbing by the government, and draw attention to the most marginalised groups. However, at times, this has come at a significant cost, including arrest and criminal prosecution. The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has noted that, laws – from sedition to censorship – have long been used to punish journalists and suppress media freedom. The legislation negatively affecting them has broadened to include also anti-terrorism laws.⁷⁶ National security is often argued to justify the prosecution of journalists who criticize government policies or officials.⁷⁷

28 | This situation is further exacerbated by the broad powers vested in law enforcement authorities in counter-terrorism contexts to arrest and detain beyond those available for ‘ordinary’ offences. The UN Special Rapporteur on counter-terrorism and human rights has expressed concern that in some States, these powers are used in a disproportionate manner to detain individuals merely for expressing criticism of state or local authorities.⁷⁸ The UN Working Group on Arbitrary Detention has expressed its concern about the “increased reliance on administrative detention” including under counter-terrorism laws,⁷⁹ pointing out that such detentions increase the likelihood of other human rights violations, including acts of torture and other forms of ill-treatment.⁸⁰ Moreover, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has expressed serious concern at draconian laws and tough sentencing of journalists in diverse countries used to instil a climate of fear.⁸¹ The UN Working Group on the Issue of Discrimination against Women in Law and in Practice has noted that women human rights defenders and journalists are increasingly at risk of prosecution and detention because of their legitimate public work.⁸² The Working Group has noted with concern that counter-terrorism laws are being used in this regard and has recommended that States should “eliminate any laws or policy measures designed to criminalize the public roles of women”.⁸³

29 | Violations of judicial guarantees in terrorism-related cases, also concerning journalists and media workers, have been reported in many States. The UN Security Council Counter-Terrorism Committee expressed its concern that many States have experienced challenges in fully respecting the rule of law in terrorism cases. For example, it has noted that generally in West Africa fair trial guarantees of the defendants in terrorism-related cases are often not observed,⁸⁴ while in Eastern Africa, legal safeguards are generally provided by law, while concerns remain regarding their implementation.⁸⁵ Alleged incidents of arbitrary arrest and detention, extended periods of police custody in excess of the prescribed period and pre-trial detention in the absence of legal guarantees, along other violations are observed in States in Central Africa.⁸⁶ With regard to South Asia, the Counter-Terrorism Committee noted shortcomings in relation to pre-trial detention without access to counsel or judicial review and observed that while in theory in several States the right to judicial review of pre-trial detention exists, in practice heavy caseloads at courts lead to undue delays.⁸⁷ In relation to Southeast Asia, the Counter-Terrorism Committee found that “State practice with regard to arbitrary arrest and detention [has] been found wanting in some cases” and that “[o]ne State is able to enforce detention for up to two years at a time, with indefinite extensions, in defiance of its established criminal procedure.”⁸⁸ In Western Asia, the Committee reported about

⁷⁶ A/HRC/50/29, para 51

⁷⁷ *Ibid.*, para 55.

⁷⁸ A/HRC/40/52, para 39.

⁷⁹ A/HRC/22/44, 24 December 2012, para 68.

⁸⁰ *Ibid.*, para 73.

⁸¹ A/HRC/50/29, para 53.

⁸² A/HRC/41/33, para 25.

⁸³ A/HRC/41/33, 15 May 2019, paras 80(i) and 82(b).

⁸⁴ Global survey of the implementation of Security Council resolution 1373 (2001) and other relevant resolutions by Member States, 2021, para. 133: https://www.un.org/securitycouncil/ctc/sites/www.un.org/securitycouncil.ctc/files/ctc_1373_gis.pdf.

⁸⁵ *Ibid.*, para 84.

⁸⁶ *Ibid.*, para 186.

⁸⁷ *Ibid.*, para 294.

⁸⁸ *Ibid.*, para 251-252.

a number of common legal procedural shortfalls, including extended periods of detention before being brought before a judge; extended periods of pre-trial detention; and delays or restrictions on access to counsel.⁸⁹ In the Central America region, the Committee raised similar concerns on arbitrary arrests and detentions that continue to be used as a means to suppress dissent under counter terrorism justifications, in addition to concerns regarding limited attention to legal safeguards of terrorist defendants.⁹⁰ Such concerns regarding procedural protections in terrorism cases were also observed in States in Eastern and Western Europe.⁹¹ In North American and other States, shortfalls identified by the Counter-Terrorism Committee include delays or restrictions on access to counsel in terrorism cases; extended periods of pre-trial detention; use of incommunicado detention; and concerns regarding the independence of the judiciary.⁹²

30 | In some contexts, unjustified long durations of pre-trial detention and delayed judicial processes are a common feature of counter-terrorism cases. When this becomes a systemic pattern, the criminal justice process may be used to silence dissenting voices. In this context, the UN human rights mechanisms have expressed concern about due process and fair trial shortcomings in terrorism related cases with respect to many States around the world, impacting also journalists and those voicing dissent.⁹³

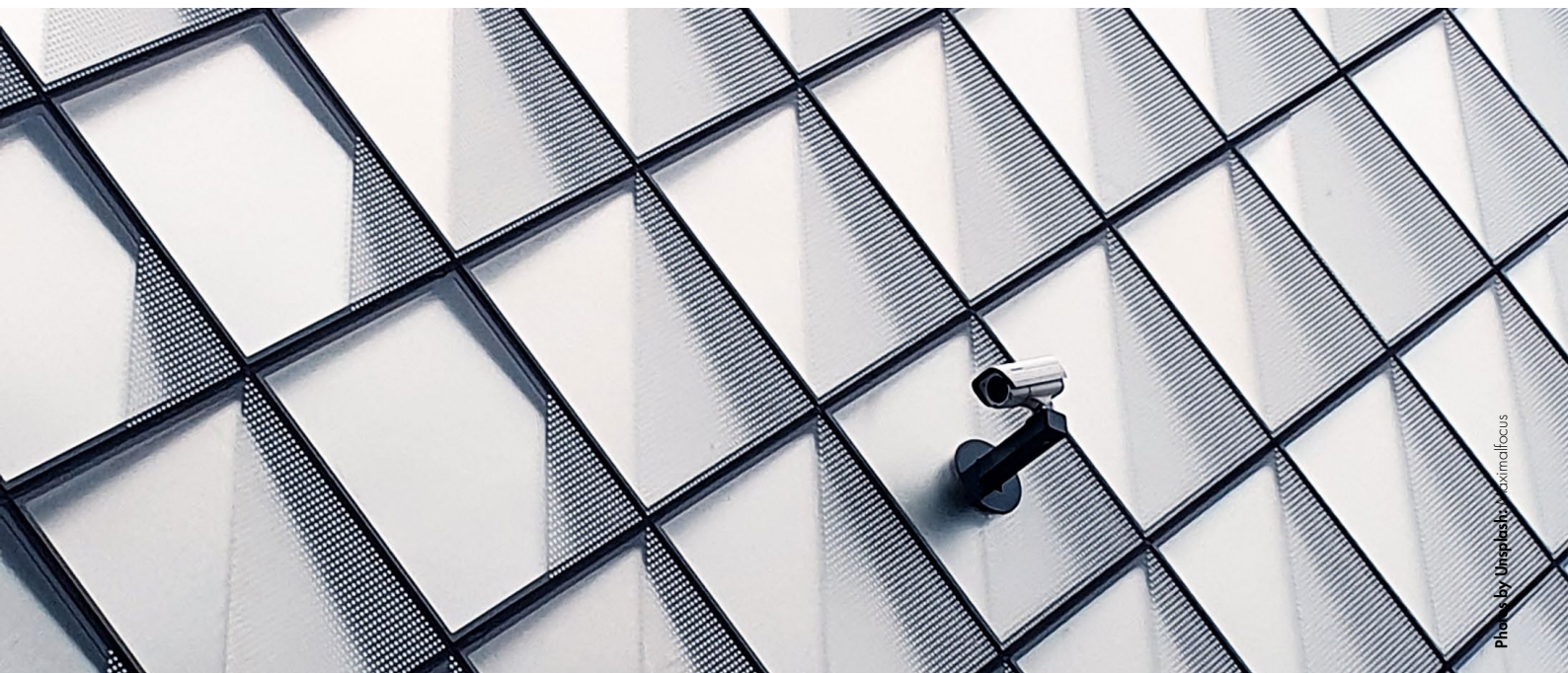
⁸⁹ *Ibid.*, para 368.

⁹⁰ *Ibid.*, para 423.

⁹¹ *Ibid.*, paras 545 and 592-3.

⁹² *Ibid.*, paras 620-1.

⁹³ E.g. CCPR/C/NGA/CO/2 para 38; CCPR/C/LAO/CO/1, para 13; CCPR/C/MRT/CO/2, para 32; CCPR/C/JOR/CO/5, paras 12 and 26; CCPR/C/MAR/CO/6, para 17; CAT/C/SLV/CO/3 para 14(b); CCPR/C/QAT/CO/1 para 10; A/HRC/42/39/ADD.1, para 59; CCPR/C/DEU/CO/7, para 14; CAT/C/KEN/CO/3, para 27; A/HRC/40/52/Add.3, para. 15; A/HRC/39/45/Add.2, para. 40; UA IND 19/2021, 1 December 2021; UA PAK 6/2017, 16 August 2017; CCPR/C/RUS/CO/8, para 18; CCPR/C/NER/CO/2, para 36; CCPR/C/DZA/CO/4, para 17; CAT/C/TUR/CO/4, para 43; CCPR/C/EGY/CO/5 para 13; CCPR/C/JPN/CO/7, para 16;



5

OTHER CRIMINAL OFFENCES TO SAFEGUARD NATIONAL SECURITY OR MAINTAIN PUBLIC ORDER AND THEIR IMPACT ON MEDIA FREEDOM AND SAFETY OF JOURNALISTS

31 | Many States' criminal legislations contain offences such as treason, sedition, and even defamation⁹⁴ in the interest of maintaining public order and national security. Under international law, any restriction under such laws on the right to freedom of expression, or on any other rights that could be subject to restrictions or limitations, must pursue a legitimate aim, be provided by law, and be necessary and proportionate.

32 | Concern has been expressed that in some States, criminal law restrictions in the name of national security are used, or are threatened to be used, to unduly restrict the exercise of the right to freedom of expression. The UN Special Rapporteur on counter-terrorism and human rights has observed, "[m]any States have adopted laws that loosely invoke national security, national interest or public order as all-encompassing categories [...] 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."⁹⁵ This section reviews several national restrictions, often justified by national security and public order grounds.⁹⁶ and provides examples of concerns raised by UN human rights mechanisms about their impact on media freedom.

SEDITION AND TREASON

33 | Criminal law offences of sedition and treason have reportedly been brought against journalists who have criticised government policies or officials.⁹⁷ The UN Human Rights Committee has cautioned that "extreme care must be taken by States parties to ensure that treason laws and similar

provisions relating to national security, whether described as sedition laws or otherwise, are crafted and applied in a manner that conforms to the strict requirements of [Article 19] paragraph 3. It is not compatible with paragraph 3, for instance, to invoke such laws to suppress or withhold from the public information of legitimate public interest that does not harm national security or to prosecute journalists, researchers, environmental activists, human rights defenders, or others, for having disseminated such information."⁹⁸

34 | On multiple occasions and with respect to many States, the UN human rights mechanisms have expressed their concern about the use of broadly defined national security related offences, such as sedition and treason, to curtail media freedom and the work of journalists.⁹⁹

⁹⁴ Some States argue that criminal defamation laws are necessary for the protection of protect public order, particularly those that criminalize defamation of the State or its institutions, or of public officials. While the legitimacy of such laws has been called into question by the UN Human Rights Committee, which has called for States to consider the decriminalization of defamation (General Comment 34, CCPR/C/GC/34, 12 September 2011, paras. 38, 47), they are included in this study for the sake of providing a complete overview of the range of criminal laws that impact on media freedom.

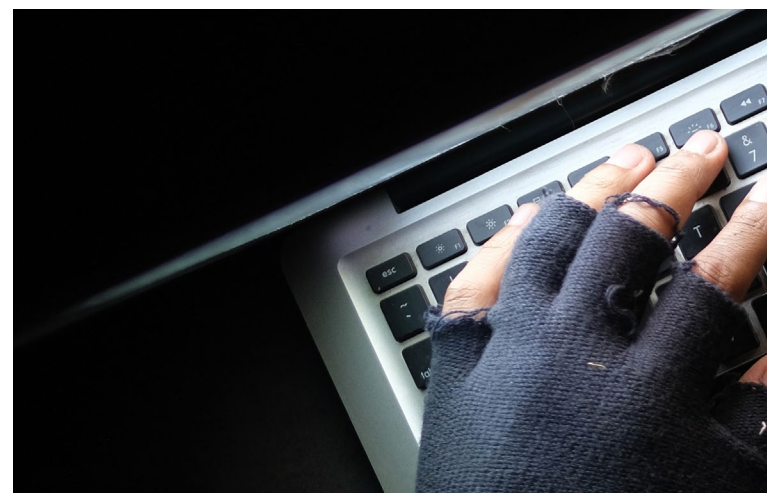
⁹⁵ A/HRC/40/52, para 46.

⁹⁶ While the subsequent sections do not provide an exhaustive list of criminal legislation, this report focuses on identifying the recurrent justifications used by States in national criminal legislation to restrict media freedom. These justifications are considered to be the most commonly employed and may indicate a global trend. This report does not address other restrictions to media freedom, such as through the application of official secrets legislation, laws that restrict foreign investment in the media, and money-laundering legislation.

⁹⁷ See for example A/HRC/50/29, para. 55.

⁹⁸ UN Human Rights Committee, General Comment 34, para 30.

⁹⁹ See e.g. [CCPR/C/CHN-HKG/CO/4](#), paras 15 and 41; AL IND 2/2021, 9 March 2021; [CCPR/C/VNM/CO/3](#), para 45 (a); [CCPR/C/BWA/CO/2](#), para 33; [A/HRC/40/53/ADD.1](#), para 62; [CCPR/C/GMB/CO/2](#), para 39; [A/HRC/38/35/ADD.3](#), paras 25 and 27; [A/HRC/49/14](#), para 118.106; [CCPR/C/RUS/CO/7](#), para 19; A/HRC/50/29, para 58



CRIMINAL DEFAMATION AND INSULT

35 | Laws criminalizing defamation and insult are sometimes invoked on public order grounds, particularly for the protection of state institutions or public officials,¹⁰⁰ and have been used to prosecute, or threaten the prosecution, of journalists who are critical of government policies or of individual members of government.¹⁰¹ 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”.¹⁰² The Committee has stated furthermore that for all such laws, “a public interest in the subject matter of the criticism should be recognized as a defence” and “imprisonment is never an appropriate penalty” and called upon States to reconsider the decriminalisation of defamation.¹⁰³

36 | In addition to the use of criminal defamation laws, strategic lawsuits against public participation (SLAPPs) are increasingly being used, often targeting journalists, community leaders, unions, civil society actors, and other groups.¹⁰⁴ These lawsuits are used as a form of legal harassment to silence critical voices and unduly restrict freedom of expression through expensive and time-consuming legal proceedings. The UN Working Group on Business and Human Rights, the UN Special Rapporteur on human rights defenders, and civil society organizations have recognized SLAPPs as a global problem, requiring immediate action by States and businesses.¹⁰⁵ SLAPPs are also highlighted in the UNGPs 10+ Roadmap as a key corporate practice inconsistent with human rights commitments and in need of urgent attention.¹⁰⁶

37 | Overall, UN human rights mechanisms have often expressed their concern repeatedly with respect to many States that continue to criminalize defamation, libel, slander, or insult, unduly restricting the right to freedom of expression, especially by journalists, media workers and human rights defenders.¹⁰⁷

100 The UN Human Rights Committee has accepted that defamation laws may be applied for the purposes of protecting public order, such as when applied for the protection of public prosecutors, who require a measure of public confidence for the effective performance of their functions: see *Kusait v. Lithuania*, [Communication 2716/2016](#), 24 September 2019, para. 8.7, where the Committee nonetheless found a violation of article 19 of the ICCPR.

101 See for example, [A/HRC/50/29](#), paras. 57, 58, 67, and 111. The UN Special Rapporteur on freedom of expression further highlighted that criminal laws against defamation persist in 160 countries in the world, including some in the European Union, a strong champion of media freedom.

102 UN Human Rights Committee, [General Comment 34](#), para 38.

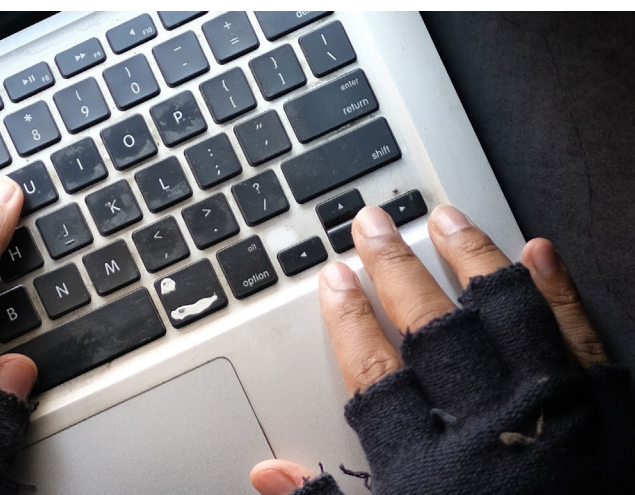
103 *Ibid.*, para 47.

104 <https://www.ohchr.org/sites/default/files/2023-01/global-drive-briefer-journalists.pdf>

105 <https://www.ohchr.org/en/statements/2022/02/critical-part-ungps-10-roadmap-increasing-protection-human-rights-defenders-face>

106 https://www.ohchr.org/sites/default/files/2022-02/Formatted-version-of-the-guidance-EN_0.pdf

107 CCPR/C/MRT/CO/2, para 42; CCPR/C/JOR/CO/5, para 30; OL MYS 6/2018, page, 28 December 2018; UN expert slams court decision upholding criminal conviction of Maria Ressa and shutdown of media outlets, 14 July 2022: <https://www.ohchr.org/en/press-releases/2022/07/philippines-un-expert-slams-court-decision-upholding-criminal-conviction>; AL PAK 2/2021, page 1 para 2, 22 January 2021; A/HRC/47/39/Add.2, paras 23 and 83; <https://www.ohchr.org/en/press-releases/2022/12/un-experts-concerned-systematic-use-slapp-cases-against-human-rights>; CERD/C/PHL/CO/21-25, para 11; CCPR/C/ZMB/CO/4, para 39; CCPR/C/CHN-MAC/CO/2, para 36; CCPR/C/LUX/CO/4 para 23; CCPR/C/BOL/CO/4, para 30; CCPR/C/KHM/CO/3, para 34; CCPR/C/QAT/CO/1, para 38; CCPR/C/DEU/CO/7, para 48; CCPR/C/ARM/CO/3 para 37(c); CCPR/C/BWA/CO/2, para 33; CCPR/C/UZB/CO/5, para 44; CCPR/C/PRT/CO/5, para 42; CCPR/C/CZE/CO/4, para 34; CCPR/C/CPV/CO/1/ADD.1, para 37; CCPR/C/NGA/CO/2, para 46; CCPR/C/TJK/CO/3, para 47; CCPR/C/VCT/CO/2/ADD.1, para 44; CCPR/C/AGO/CO/2, para 41; A/HRC/41/35/ADD.1, para 25; CCPR/C/PER/CO/5, para. 22; CCPR/C/ITA/CO/6, para 38; CCPR/C/ALB/CO/2, para 19; A/HRC/43/51/ADD.2, para 30.





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CYBER-SECURITY AND CYBERCRIME LAWS

38 | In several States, specific legislation has been introduced that criminalizes certain forms of speech online and online content. Cybercrime legislation criminalises a broad range of acts related to the use of a computer or computer network. However, provisions regulating cybercrimes and their application have often been used to regulate the content of online expression and impose broad restrictions on free speech, for example by criminalizing various online content related to extremism, terrorism, public morals, or hate speech.¹⁰⁸ Such laws often enable broad law enforcement and procedural measures, including surveillance and data collection, without due consideration of the rights to privacy, freedom of expression and due process. The UN Special

Rapporteur on freedom of opinion and expression expressed concern about these developments, noting that “[t]he arsenal of legal weapons has broadened to include criminal cyber-libel, anti-terrorism, cybersecurity and fake news laws. In many instances, punishment for online publication is more severe than print or broadcast.”¹⁰⁹

39 | Other UN human rights mechanisms have also expressed their concern about the impact of such laws on freedom of expression, media freedom, and the work of journalists.¹¹⁰

¹⁰⁸ https://www.unodc.org/documents/Cybercrime/AdHocCommittee/First_session/OHCHR_17_Jan.pdf

¹⁰⁹ [A/HRC/50/29](#), para 51.

¹¹⁰ [CCPR/C/PHL/CO/5](#), para 43; [A/HRC/50/29](#), paras 52 and 64; [CCPR/C/GIN/CO/3](#), para 43; [CAT/C/BGD/CO/1](#), paras. 29-31; [PAK.8/2016](#); [CCPR/C/EGY/CO/5](#), para 45; [CCPR/C/NIC/](#)

[CO/4](#), para 31; [CCPR/C/KHM/CO/3](#), para 34; [CCPR/C/TGO/CO/5](#), para 43; [CCPR/C/LBN/CO/3](#), para 45; [CCPR/C/KWT/CO/3](#), para 40; [A/HRC/49/13](#), para 147.88; [CEDAW/C/TUN/CO/7](#), para 23; [A/HRC/47/11](#), para 134.94; [A/HRC/40/10](#), para 136.18; [CCPR/C/BRA/CO/3](#), para 57; [CCPR/C/UGA/CO/2](#), para 42.

INTERNET SHUTDOWNS

40 | Undue restrictions on freedom of expression and media freedom have been observed in the online space also through non-criminal measures, notably internet shutdowns. These are deliberate actions by a government or its representatives to disrupt online information and communication systems. These actions can include limiting access to the internet on a large scale or hindering the functionality of essential communication services like social media and messaging. Such shutdowns have unintended consequences, affecting numerous users engaged in legitimate activities, leading to enormous collateral damage beyond the scope of their intended purposes.¹¹¹

41 | The disruption of internet connectivity, a form of internet shutdowns, has been increasingly imposed under the pretext of maintaining public order and protecting national security or the need to restrict the circulation of information deemed illegal or likely to cause harm.¹¹² A similar measure adopted consists of blocking specific services, such as telecommunications services, messaging and social media platforms. The duration of shutdowns and the blocking of other services can range from hours to months and years. Internet shutdowns have been ordered under a variety of national laws, some of which have been criticised by UN human rights mechanisms due to not meeting standards of legality, necessity and proportionality, and their eventual negative impact on freedom of expression and media freedom.¹¹³

42 | In particular, the UN Special Rapporteur on freedom of opinion and expression has found that internet shutdowns “invariably fail to meet the standard of necessity”, have been “generally disproportionate” in terms of their duration and geographic scope, and that contrary to government assertions, maintaining network connectivity may mitigate public safety concerns and help restore public order.¹¹⁴ The High Commissioner for Human Rights has consistently expressed concerns about shutdowns and has called upon States not to implement them, in particular during assemblies, and emphasized the negative impact of internet disruptions on the work of journalists and the media during periods surrounding elections.¹¹⁵ In this light, the Human Rights Council has repeatedly condemned Internet shutdowns and urged States to refrain from them.¹¹⁶

ARRESTS, DETENTIONS AND THE THREAT OF PROSECUTIONS

43 | The use by law enforcement agencies of powers of arrest and detention typically available to them under criminal law, along with the threat and institution of criminal prosecutions, can have a significant ‘chilling effect’ on the exercise of the right to freedom of expression. This has been recognized by the UN Human Rights Committee, which has held, in the context of criminal defamation charges:

‘It is impermissible for a State party to indict a person for criminal defamation but then not to proceed to trial expeditiously – such a practice has a chilling effect that may unduly restrict the exercise of freedom of expression of the person concerned and others.’¹¹⁷

44 | In several States, a high number of charges are brought, and prosecutions started against journalists and media workers but few result in convictions. This leads to concerns such as have been expressed by several UN human rights Special Procedures mandate holders, who described meritless prosecutions as “harassment” and warned at the “pressure that these charges create for the journalists” and at the resulting “chilling effect on independent media and civil society”.¹¹⁸ They have repeatedly expressed their concern at the impact on media freedom of the use of arrest and detention, and the threat of prosecution.¹¹⁹

¹¹¹ A/HRC/50/55, para 4

¹¹² A/HRC/50/55, paras 31-2

¹¹³ See e.g. CCPR/C/KGZ/CO/3, para 45; CCPR/C/KHM/CO/3, para 34; CCPR/C/UZB/CO/5, para 44; CCPR/C/VNM/CO/3 para 45; CCPR/C/TJK/CO/3, para 21; CCPR/C/MNG/CO/6, para 37; CCPR/C/TKM/CO/2, para 42; CCPR/C/KWT/CO/3, para 40; CCPR/C/KAZ/CO/2, para 49; A/HRC/44/50/ADD.2, paras 57-8; A/HRC/35/22/ADD.2, paras 29-34; AL MMR 1/2021; A/HRC/49/72, para 47.

¹¹⁴ 30 March 2017, UN Doc. [A/HRC/35/22](#), paras. 14, 15.

¹¹⁵ [A/HRC/44/24](#) para 18 and A/HRC/50/55, para 26

¹¹⁶ E.g. A/HRC/RES/47/16, para 11 and A/HRC/RES/45/18, para 4

¹¹⁷ General comment No. 34, [CCPR/C/GC/34](#), para 47.

¹¹⁸ [AL PAK 2/2021](#).

¹¹⁹ [CAT/C/BGD/CO/1](#), para 29; [CERD/C/RUS/CO/25-26](#), para 23(e); [A/HRC/44/22](#), paras 41-42 and 59; [AL VNM 3/2020](#); [CERD/C/SGP/CO/1](#), para 11; [CERD/C/PSE/CO/1-2](#), para 19(b); [CERD/C/AZE/CO/7-9](#), para 35; [AL PAK 2/2021](#); [CCPR/C/ETH/CO/2](#), para 39; [A/HRC/41/35/ADD.1](#), para 25.

6 CONCLUSIONS AND RECOMMENDATIONS

45 | The media is key in realising the exercise of a wide range of human rights, including the right to freedom of expression, which is essential in any democratic society. This includes the public 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. Counter-terrorism measures that negatively affect their ability to do so undermine civic space.

46 | 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 international human rights law obligations and protect the right to freedom of expression, including media freedom. Laws and regulations that restrict the freedom of expression or any other human right relevant for the journalistic and media work on grounds of national security and public order, including through counter-terrorism and other criminal laws, must not impose restrictions beyond what is permissible under international human rights law.

47 | Effective counter-terrorism measures and the protection of human rights are complementary and mutually reinforcing objectives which must be pursued together as part of States' duty to protect individuals against acts of terrorism. Counter-terrorism measures, including legislation, must be rooted in human rights and the rule of law. This must be reflected not only in law, but also in the practice, procedure and institutional culture of those who enforce the law.

48 | States must ensure that counter-terrorism and other criminal laws and their implementation comply with the international human rights law. States should:

- Ensure that their criminal legislation, including on terrorism-related offences, does not contain offences, which are overly broad, vague, or open-ended, but rather accessible and formulated in full compliance with the principle of legality;



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- Ensure that any restrictions to the right of freedom of expression or any other human rights relevant for the work of journalists and media workers, including in the context of counter-terrorism, national security and public order, pursue a legitimate aim, are provided by law, are necessary and proportionate, and non-discriminatory;

- Where necessary, amend or repeal their counter-terrorism and criminal laws to ensure compliance with international human rights law, aiming inter alia at ensuring the ability of journalists and media workers to perform their work unhindered;

- Ensure that criminal offences, such as defamation, insult, seditious libel, and their application do not affect the availability of journalist to report freely; and repeal any other laws that have the effect of criminalizing criticism of State policies, institutions, or officials;

- Take appropriate measures to improve the online safety of journalists and media workers, including by responding to threats and attacks relating to their exercise of professional functions. Ensure that any limitations of freedom of expression online are consistent with human rights law, including criminalisation of expression in cybercrime legislation or offences;

- 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 full reparation;

- Ensure that allegation of violations journalists' and media workers' rights in relation to their roles and activities, are investigated independently, impartially, promptly, thoroughly, and effectively, and those responsible punished within fair proceedings. Such investigation should take into account gender dimensions;

- Ensure the ability of journalists and media workers to gather, report and disseminate information online by refraining from imposing the full range of internet shutdowns, including on the basis of national security laws, as such measures are inherently disproportionate;

- Ensure that no journalist or media worker is detained, subject to surveillance, harassed or

intimidated, including through the dissemination of false information, retaliated against for the exercise of their right to freedom of expression or for their journalistic work;

- Avoid the use of detention for reasons of security (administrative detention), except only under the most exceptional circumstances, when a present, direct and imperative threat justifies it and in full compliance with international law. Detentions must always be necessary, reasonable and proportionate, and subject to prompt and subject to effective judicial guarantees;

- Prevent and refrain from using lawsuits against journalists and media workers as tools to curtail freedom of expression beyond the narrow restrictions permitted by article 19 of the International Covenant on Civil and Political Rights;

- Ensure that law enforcement agencies and the judiciary are appropriately trained on human rights, media freedoms and the protection of journalists, including as applied in the context of counter-terrorism; and

- Take gender sensitive steps to promote an enabling environment for the exercise of the right to freedom of expression, where journalists, including women journalists, are able to carry out their legitimate work, speak out, report, and participate in debate on matters of public interest, including on terrorism and counter terrorism issues, without fear of threats or acts of intimidation and harassment of any sort.



OHCHR STUDY

November 2023