



International Mechanisms for Promoting Freedom of Expression

JOINT DECLARATION ON CRIMES AGAINST FREEDOM OF EXPRESSION

The United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information,

Having met in Paris on 13 September 2011 and in Tunis on 4 May 2012 and having discussed these issues together with the assistance of ARTICLE 19, Global Campaign for Free Expression and the Centre for Law and Democracy;

Recalling and reaffirming our Joint Declarations of 26 November 1999, 30 November 2000, 20 November 2001, 10 December 2002, 18 December 2003, 6 December 2004, 21 December 2005, 19 December 2006, 12 December 2007, 10 December 2008, 15 May 2009, 3 February 2010 and 1 June 2011;

Emphasising, once again, the fundamental importance of freedom of expression both in its own right and as an essential tool for the defence of all other rights, as a core element of democracy and for advancing development goals;

Expressing our abhorrence over the unacceptable rate of incidents of violence and other crimes against freedom of expression, including killings, death-threats, disappearances, abductions, hostage takings, arbitrary arrests, prosecutions and imprisonments, torture and inhuman and degrading treatment, harassment, intimidation, deportation, and confiscation of and damage to equipment and property;

Noting that violence and other crimes against those exercising their right to freedom of expression, including journalists, other media actors and human rights defenders, have a chilling effect on the free flow of information and ideas in society ('censorship by killing'), and thus represent attacks not only on the victims but on freedom of expression itself, and on the right of everyone to seek and receive information and ideas;

Concerned about the particular challenges and danger faced by women exercising their right to freedom of expression, and denouncing gender specific crimes of intimidation including sexual assaults, aggression and threats;

Mindful of the important contribution to society made by those who investigate into and report on human rights abuses, organised crime, corruption, and other serious forms of illegal behaviour, including journalists, media actors and human rights defenders, and of the fact that the nature of their professions makes them susceptible to criminal retribution, and that they may, as a result, be in need of protection;

Condemning the prevailing state of impunity for crimes against freedom of expression and the apparent lack of political will in some countries to address these violations, with the result that an

unacceptable number of these crimes are never prosecuted, which emboldens the perpetrators and instigators and substantially increases the incidence of these crimes;

Noting that independent, speedy and effective investigations into and prosecutions of crimes against freedom of expression are essential to addressing impunity and ensuring the respect for the rule of law;

Stressing the fact that crimes against freedom of expression, if committed by State authorities, represent a particularly serious breach of the right to freedom of expression and the right to information, but that States also have an obligation to take both preventive and reactive measures in situations where non-state actors commit crimes against freedom of expression, as part of States' obligation to protect and promote human rights;

Aware of a number of root causes that contribute to crimes against freedom of expression, such as high prevailing rates of corruption and/or organised crime, the presence of armed conflict and lack of respect for the rule of law, as well as the particular vulnerability of some of those who investigate and report on these problems;

Cognisant of a number of international standards that are relevant to this issue, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Geneva Conventions of 1949 and their Additional Protocols, the International Convention for the Protection of All Persons from Enforced Disappearance, UN Security Council Resolution 1738 (2006), UN Human Rights Council Resolution 12/16: Freedom of opinion and expression, the 2007 UNESCO Medellin Declaration and the 2010 UNESCO Decision on the Safety of Journalists and the Issue of Impunity;

Adopt, in Port of Spain, Trinidad and Tobago, on 25 June 2012, the following Joint Declaration on Crimes Against Freedom of Expression:

1. General Principles

- a. State officials should unequivocally condemn attacks committed in reprisal for the exercise of freedom of expression and should refrain from making statements that are likely to increase the vulnerability of those who are targeted for exercising their right to freedom of expression.
- b. States should reflect in their legal systems and practical arrangements, as outlined below, the fact that crimes against freedom of expression are particularly serious inasmuch as they represent a direct attack on all fundamental rights.
- c. The above implies, in particular, that States should:
 - i. put in place special measures of protection for individuals who are likely to be targeted for what they say where this is a recurring problem;
 - ii. ensure that crimes against freedom of expression are subject to independent, speedy and effective investigations and prosecutions; and
 - iii. ensure that victims of crimes against freedom of expression have access to appropriate remedies.
- d. In situations of armed conflict, States should respect the standards set out in Article 79 of Protocol I additional to the Geneva Conventions, 1977, which provides that journalists are entitled to the same protections as civilians, provided they take no action adversely affecting their status.

2. Obligations to Prevent and Prohibit

- a. States have an obligation to take measures to prevent crimes against freedom of expression in countries where there is a risk of these occurring and in specific situations where the

authorities know or should have known of the existence of a real and immediate risk of such crimes, and not only in cases where those at risk request State protection.

- b. These obligations include the following legal measures:
 - i. the category of crimes against freedom of expression should be recognised in the criminal law, either explicitly or as an aggravated circumstance leading to heavier penalties for such crimes, taking into account their serious nature; and
 - ii. crimes against freedom of expression, and the crime of obstructing justice in relation to those crimes, should be subject to either unlimited or extended statutes of limitations (i.e. the time beyond which prosecutions are barred).
- c. These obligations include the following non-legal measures:
 - i. appropriate training on crimes against freedom of expression, including gender specific crimes, should be provided to relevant law enforcement officials, including the police and prosecutors, as well, where necessary, to military personnel;
 - ii. operation manuals and guidelines should be developed and implemented for law enforcement officials when dealing with crimes against freedom of expression;
 - iii. training supported by the State should be available for individuals who may be at risk of becoming victims of crimes against freedom of expression and this issue should be covered in university courses on journalism and communications;
 - iv. systems to ensure effective access to information about the circumstances, investigation and prosecution of crimes against freedom of expression, including media access to the courts, should be put in place, subject to appropriate guarantees of confidentiality; and
 - v. consideration should be given to putting in place general measures of protection such as providing health care, insurance and other benefit programmes to individuals who may be at risk of becoming victims of crimes against freedom of expression.

3. Obligations to Protect

- a. States should ensure that effective and concrete protection is made available on an urgent basis to individuals likely to be targeted for exercising their right to freedom of expression.
- b. Specialised protection programmes, based on local needs and challenges, should be put in place where there is an ongoing and serious risk of crimes against freedom of expression. These specialised programmes should include a range of protection measures, which should be tailored to the individual circumstances of the person at risk, including his or her gender, need or desire to continue to pursue the same professional activities, and social and economic circumstances.
- c. States should maintain detailed and disaggregated statistics on crimes against freedom of expression and the prosecution of these crimes, among other things to facilitate better planning of prevention initiatives.

4. Independent, Speedy and Effective Investigations

When a crime against freedom of expression takes place, States should launch an independent, speedy and effective investigation, with a view to bringing to trial, before impartial and independent tribunals, both perpetrators and instigators of these crimes.

Such investigations should meet the following minimum standards.

- a. Independent
 - i. The investigation should be carried out by a body that is independent from those implicated in the events. This implies both formal hierarchical and institutional independence, and practical arrangements to secure independence.

- ii. When there are credible allegations of involvement of State agents, the investigation should be carried out by an authority outside of the jurisdiction or sphere of influence of those authorities, and the investigators should be able to explore all allegations fully.
- iii. An effective system should be put in place for receiving and processing complaints regarding investigations by law enforcement officials of crimes against freedom of expression, which is sufficiently independent of those officials and their employers, and which operates in a transparent manner.
- iv. Where the seriousness of the situation warrants it, in particular in cases of frequent and recurrent crimes against freedom of expression, consideration should be given to establishing specialised and dedicated investigative units – with sufficient resources and appropriate training to operate efficiently and effectively – to investigate crimes against freedom of expression.

b. Speedy

- i. The authorities should make all reasonable efforts to expedite investigations, including by acting as soon as an official complaint or reliable evidence of an attack against freedom of expression becomes available.

c. Effective

- i. Sufficient resources and training should be allocated to ensure that investigations into crimes against freedom of expression are thorough, rigorous and effective and that all aspects of such crimes are explored properly.
- ii. Investigations should lead to the identification and prosecution of all of those responsible for crimes against freedom of expression, including direct perpetrators and instigators, as well as those who conspire to commit, aid and abet, or cover up such crimes.
- iii. Where there is some evidence that a crime which has been committed may be a crime against freedom of expression, the investigation should be conducted with the presumption that it is such a crime until proven otherwise, and relevant lines of enquiry related to the victim's expressive activities have been exhausted.
- iv. Law enforcement bodies should take all reasonable steps to secure relevant evidence and all witnesses should be questioned with a view to ascertaining the truth.
- v. The victims, or in case of death, abduction or disappearance the next-of-kin, should be afforded effective access to the procedure. At the very least the victim or the next-of-kin must be involved in the procedure to the extent necessary to safeguard their legitimate interests. In most instances, this will require giving access to certain parts of the proceedings and also to the relevant documents to ensure participation is effective.
- vi. Civil society organisations should be able to lodge complaints about crimes against freedom of expression – of particular importance in cases involving killings, abductions or disappearances where the next-of-kin are unwilling or unable to do so – and intervene to in the criminal proceedings.
- vii. Investigations should be conducted in a transparent manner, subject to the need to avoid prejudice to the investigation.
- viii. Restrictions on reporting on court cases involving prosecutions of crimes against freedom of expression should be limited to highly exceptional cases where clearly overriding interests prevail over the particularly strong need for openness in such cases.
- ix. In addition to criminal investigations, disciplinary proceedings should be carried out where there is evidence that public officials have committed crimes against freedom of expression in the course of their professional duties.

5. Redress for Victims

- a. Where crimes against freedom of expression are committed, the victims should be able to pursue appropriate civil remedies, regardless of whether or not a criminal act has been established.

- b. Where a conviction is entered for a crime against freedom of expression, a system should be in place to ensure that an adequate remedy is provided to the victims, without the need for them to pursue independent legal action. Such remedies should be proportionate to the gravity of the violations, and should include financial compensation, and a range of measures to rehabilitate the victims and to facilitate the return of victims to their homes in conditions of safety and/or to reinstate them in their work if they so desire.
6. Role of other stakeholders
- a. Inter-governmental organisations should continue to prioritise the fight against impunity for crimes against freedom of expression and use available review mechanisms to monitor whether States are complying with their international obligations in this area.
 - b. State and non-state donors should be encouraged to fund projects which aim to prevent and combat crimes against freedom of expression.
 - c. Media organisations should be encouraged to provide adequate safety, risk awareness and self-protection training and guidance to both permanent and freelance employees, along with security equipment where necessary.
 - d. Relevant civil society organisations and media should be encouraged, as appropriate, to continue to monitor and report on crimes against freedom of expression, to coordinate global campaigns on crimes against freedom of expression, and to consolidate documentation, for example through a central website/portal.

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