



JOINT DECLARATION ON FREEDOM OF EXPRESSION AND RESPONSES TO CONFLICT SITUATIONS

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 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, 1 June 2011, 25 June 2012, 4 May 2013 and 6 May 2014;

Deploring systematic or targeted attacks on democracy and freedom of expression by State and non-State actors in many countries which take place in different contexts, including international and non-international armed conflicts, terrorist attacks, and widespread organised crime resulting in the effective failure of the rule of law;

Alarmed particularly at recent abhorrent direct attacks on freedom of expression, including the calculated killings of journalists, some of which have been widely disseminated publicly;

Deeply concerned about the impact of systematic attacks, which usually involve physical attacks on those exercising their right to freedom of expression, and which can lead to widespread self-censorship and the suppression of open debate about certain public interest issues;

Also concerned that States often respond to such situations in a rapid, reactive manner by imposing unjustifiable or disproportionate restrictions on freedom of expression;

Emphasising that censorship is not an effective response to extremism, that open and critical debate is an important part of any strategy to address systematic attacks on freedom of expression and their underlying causes, and that overbroad criminalisation of expression can drive grievances underground and foster violence;

Stressing that the protections of human rights law apply to all who seek, receive and impart information, and emphasising the importance of promoting media professionalism and respect for journalistic standards, as part of the media's critical contribution to fostering dialogue and providing access to information and ideas in times of conflict;

Recalling statements in our previous Joint Declarations which have addressed some of the issues raised here;

Adopt, in Riga, on 4 May 2015, the following Joint Declaration on Freedom of Expression and Responses to Conflict Situations:

1. Scope of the Joint Declaration

This Joint Declaration addresses systematic or targeted attacks on freedom of expression which are aimed at silencing certain perspectives or voices, whether internationally, nationally or locally, and State responses to such attacks. Such attacks are perpetrated in different contexts, including of international and non-international armed conflicts, terrorist attacks and widespread organised crime.

2. General Principles

- a. States have a direct responsibility under international human rights law to respect freedom of expression and they are also under a positive obligation to take effective measures to protect freedom of expression against attacks by third parties, including by ensuring accountability for any attacks on those exercising their right to freedom of expression and by raising awareness about the importance of freedom of expression.
- b. States should not respond to crisis situations by adopting additional restrictions on freedom of expression, except as strictly justified by the situation and international human rights law.
- c. Any restriction on freedom of expression must meet the three-part test under international human rights law, namely that it is provided for by law, it serves to protect a legitimate interest recognised under international law and it is necessary to protect that interest.
- d. In the context of systematic attacks on freedom of expression, non-State actors bear direct responsibility for their actions where these represent breaches of domestic law, or of international humanitarian or criminal law.

3. Criminal Restrictions on Content

- a. All criminal restrictions on content – including those relating to hate speech, national security, public order and terrorism/extremism – should conform strictly to international standards, including by not providing special protection to officials and by not employing vague or unduly broad terms.
- b. In particular, States should refrain from applying restrictions relating to ‘terrorism’ in an unduly broad manner. Criminal responsibility for expression relating to terrorism should be limited to those who incite others to terrorism; vague concepts such as ‘glorifying’, ‘justifying’ or ‘encouraging’ terrorism should not be used.

4. Administrative Measures

- a. Administrative measures which directly limit freedom of expression, including regulatory systems for the media, should always be applied by an independent body. This should also normally be the case for administrative measures which indirectly limit freedom of expression and, where this is impossible, for example for security reasons, application of the measures should be overseen by an independent body. It should also be possible to appeal against the application of administrative measures to an independent court or other adjudicatory body.

- b. Administrative measures restricting freedom of expression should be imposed only where they can be justified pursuant to the three-part test for such restrictions.
- c. Filtering of content on the Internet, using communications 'kill switches' (i.e. shutting down entire parts of communications systems) and the physical takeover of broadcasting stations are measures which can never be justified under human rights law.
- d. Administrative measures should not be used to restrict the movement of journalists, including the entry of foreign journalists into a country, or media coverage of demonstrations or other events of public interest, unless this is strictly justified by the exigencies of the situation, in line with the three-part test.

5. Protections

- a. Natural and legal persons who are regularly or professionally engaged in the collection and dissemination of information to the public via any means of communication have the right to protect the identity of their confidential sources of information against direct and indirect exposure, including against exposure via surveillance.
- b. Individuals who expose wrongdoing, serious maladministration, a breach of human rights, humanitarian law violations or other threats to the overall public interest, for example in terms of safety or the environment, should be protected against legal, administrative or employment-related sanction, even if they have otherwise acted in breach of a binding rule or contract, as long as at the time of the disclosure they had reasonable grounds to believe that the information disclosed was substantially true and exposed wrongdoing or the other threats noted above.
- c. States have an obligation to take effective measures to prevent attacks against journalists and others exercising their right to freedom of expression and to combat impunity, in particular by vigorously condemning such attacks when they do occur, by investigating them promptly and effectively in order to duly sanction those responsible, and by providing compensation to the victims where appropriate. States also have an obligation to provide protection to journalists and others exercising their right to freedom of expression who are at a high risk of being attacked.

6. Positive Measures

States should take measures to ensure that all groups in society have access to opportunities to make their voices heard, both within their communities and in wider social debates, including through measures to promote media diversity, public service broadcasting and community media. The promotion of media and digital literacy and citizen journalism, including the capacity to make effective use of online communication tools, are also important. Such measures can contribute, among other things, to reducing the feelings of alienation which can increase the risk of participation in attacks on freedom of expression.

7. Political Stances

Political leaders should avoid exploiting systematic attacks on freedom of expression for political ends and, in particular, should avoid making statements which might encourage discrimination, otherwise undermine equality or attacks on media workers or members of minority groups. They should, instead, provide leadership in promoting intercultural understanding.

8. Privacy of Communications

- a. Conflict situations should not be used to justify an increase in surveillance by State actors given that surveillance represents an invasion of privacy and a restriction on freedom of expression. In accordance with the three-part test for restrictions on freedom of expression and, in particular, the necessity part of that test, surveillance should be conducted only on a limited and targeted basis and in a manner which represents an appropriate balance between law enforcement and security needs, on the one hand, and the rights to freedom of expression and privacy, on the other. Untargeted or “mass” surveillance is inherently disproportionate and is a violation of the rights to privacy and freedom of expression.
- b. Similarly, requirements to retain or practices of retaining personal data on an indiscriminate basis for law enforcement or security purposes are not legitimate. Instead, personal data should be retained for law enforcement or security purposes only on a limited and targeted basis and in a manner which represents an appropriate balance between law enforcement and security needs and the rights to freedom of expression and privacy.
- c. States should always be fully transparent regarding their systems of surveillance, including the legal and policy framework for this.
- d. There should be adequate independent oversight of systems of surveillance, including of the authorities tasked with actually conducting surveillance.
- e. Encryption and anonymity online enable the free exercise of the rights to freedom of opinion and expression and, as such, may not be prohibited or obstructed and may only be subject to restriction in strict compliance with the three-part test under human rights law.

9. Law Enforcement

- a. Law enforcement authorities should avoid reacting to systematic attacks on freedom of expression by engaging in broad and large-scale application of laws restricting freedom of expression and should, instead, ensure that such laws are applied only in cases which appear to involve a clear breach of their provisions.
- b. The judiciary should refrain from engaging in hasty or summary trials or applying excessive sanctions in reaction to systematic attacks on freedom of expression, and should always ensure full respect for due process guarantees and interpret and apply laws, as relevant, in the manner which best gives effect to the right to freedom of expression.
- c. Training programmes should be put in place for law enforcement and administration of justice officials to ensure the above and also to ensure more generally that law enforcement is consistent with international human rights guarantees.

10. States of Emergency

States of emergency should be imposed only as permitted under international law, including because the situation poses a threat to the life of the nation.

11. Situations Where the Rule of Law is no Longer Effective

States and private actors are still bound to respect international humanitarian law even where the rule of law has failed, including provisions which call for media workers to be treated as civilians rather than as combatants.