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JOURNALISM

Weaponizing the Law:

Attacks on Media Freedom

A report by Joel Simon, Carlos Lauría and Ona Flores

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FOREWORD



ANTONIO ZAPPULLA

CHIEF EXECUTIVE OFFICER, THOMSON REUTERS FOUNDATION

Journalists have long been under siege. From war reporting on the frontlines to covering natural disasters, to keeping pace with the COVID-19 pandemic – journalists have frequently risked their own lives in the interests of others. The mission to inform and empower can be as dangerous as it is critical.

These threats are no longer circumstantial. For years, the deliberate targeting and silencing of journalists by those invested in controlling the free flow of information has been surging. In an era defined by converging global crises, journalists who hold power to account are increasingly making enemies of the powerful.

Recently, however, the tactics have turned. As information becomes an ever more valuable currency, efforts to control it have taken on new and alarming forms. The systematic extinction of free speech now depends upon an arsenal of weapons aimed at the many rather than the few; a global tidal wave of legal threats against journalists, designed to stifle unwanted narratives and public debate.

This weaponization of the law – amplified by recent events such as the pandemic and the invasion of Ukraine – is being used in myriad ways and by different players, but with the same desired outcome: the criminalization of media practitioners to suppress scrutiny and to seize power. Designed to ensnare and cripple journalists, widespread abuses of the law range from the introduction of new legislation purporting to be in the interests of national security, to the rise in unjust lawsuits by powerful individuals that threaten financial ruin.

The [Thomson Reuters Foundation](#) uniquely uses the combined power of journalism and the law to defend and promote media freedom, which is critical to its mission of strengthening free, fair and informed societies. Our legacy of work has allowed us to develop global networks that bring together journalists and media organisations, as well as lawyers and governments. This gives us unparalleled insights into the complexities of these growing issues – from the perspective of those targeted, and of those working to provide solutions.

There are many players invested in a thriving media ecosystem, representing different sectors and geographies; all are attempting to grapple with these new threats. But in mounting a collaborative and coordinated defense, we must first understand the nature and scale of the attack. Up until now, individual cases have been well documented, but data-led research that would build a clearer picture of these global trends has been missing.

In approaching Columbia University's Tow Center for Digital Journalism to conduct this research, our purpose was to bridge the knowledge gap, using – for the first time – both qualitative and quantitative data to map the most serious legal threats to journalists worldwide. This report combines the lived experiences of the Foundation's extensive network of journalists with global experts' perspectives and provides analysis that draws on both.

Inspired by the many journalists who have been trained by, and worked with, the Foundation, we hope that this resource empowers all those fighting to protect strong, free and independent media.

Our goal is also to unite those at the forefront of addressing this common goal. The future of the profession – and of our fundamental civil liberties – is at stake.



THE TEAM



Joel Simon

Director

Joel Simon is the founding director of the Journalism Protection Initiative at the Craig Newmark Graduate School of Journalism, at the City University of New York. During 2022, Simon was a fellow at the Tow Center for Digital Journalism at Columbia University, and a Senior Research Fellow at the Knight First Amendment Institute, also at Columbia. From 2006 to 2021 he served as the executive director of the Committee to Protect Journalists.



Carlos Lauría

Lead Researcher

Carlos Lauría, from Argentina, is a journalist and international press freedom expert. From 2017 to 2021 he headed the freedom of expression portfolio of the Open Society Foundation's program on independent journalism. Previously, he served for 15 years as program director and senior coordinator for the Americas program at the Committee to Protect Journalists. He settled in New York City in 1994 as US bureau chief for Argentina's largest magazine publisher, Editorial Perfil.



Ona Flores

Legal Researcher

Ona Flores is an international human rights lawyer with more than 15 years of experience working in the Inter-American human rights system and engaging with the UN human rights mechanisms. From 2018 to 2021 she was Civic Freedoms Research Advisor for the International Center for Not-for-Profit Law, where she worked as lead researcher for the UN Special Rapporteur on freedom of peaceful assembly and of association. Previously, she served as Senior Staff Attorney at the Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights.



Emily Bell

Advisor and oversight

Emily Bell is founding director of the Tow Center for Digital Journalism at Columbia Journalism School and a leading thinker, commentator and strategist on digital journalism. The majority of Bell's career was spent at Guardian News and Media (GNM), in London, where she was an award-winning writer and editor both in print and online. As editor-in-chief across Guardian websites and director of digital content for GNM, Bell led the web team in pioneering live blogging, multimedia formats, data and social media, making the Guardian a recognized pioneer in the field.



Catalina Botero

Advisor

Catalina Botero Marino is a lawyer, director of the UNESCO Chair on Freedom of Expression at the Universidad de Los Andes, in Colombia, co-chair of the Oversight Board of Facebook and Instagram, member of the external transparency panel of the Inter-American Development Bank, commissioner of the International Commission of Jurists and member of the Advisory Board of the International Bar Association's Human Rights Institute. She is an adjunct professor at American University's Human Rights Academy and the consulting director of Columbia University's Global Freedom of Expression initiative. She was Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights of the OAS, Dean of the Faculty of Law of the Universidad de Los Andes, and an Associate Judge of the Constitutional Court and of the Council of State in Colombia.

EXECUTIVE SUMMARY

Among the many and wide-ranging threats to media freedom that have proliferated in recent years is the mounting number of legal attacks on journalists and journalism, often used to silence public interest reporting and exert control. An array of sweeping and repressive legislative, regulatory, and other legal threats to journalists are stifling their ability to operate freely and independently, with grave repercussions for the journalists themselves and for the audiences they serve.

Media freedom organizations have documented record numbers of imprisoned reporters worldwide. A staggering 363 were jailed at the end of 2022, according to the Committee to Protect Journalists (CPJ), while Reporters Without Borders – which uses a different methodology – recorded 533. While only a handful of countries jail journalists in large numbers, legal attacks are happening everywhere, including in the world’s leading democracies. These threats range from simple harassment to “lawfare” – systematic legal action intended to stifle critical reporting and suppress fundamental rights. In many instances, governments themselves use the legal system to undermine the work of the press, but private actors – including politicians, businesspeople, celebrities, and even alleged leaders of criminal organizations – have also found creative ways to use the law as a cudgel.

363



REPORTERS WERE JAILED

at the end of 2022, according to the
Committee to Protect Journalists





REUTERS/Clodagh Kilcoyne

Egregious examples include Katsiaryna Andreyeva, a correspondent for Belsat in Belarus, who was found [guilty of 'state treason'](#) in 2022, and sentenced to eight years in prison. Andreyeva was already serving a two-year sentence for allegedly organizing an illegal protest because she had livestreamed a November 2020 demonstration against President Alexander Lukashenko's disputed reelection.

In Vietnam, in 2021, Pham Doan Trang was convicted and sentenced to nine years in prison after a one-day trial for [spreading anti-state propaganda](#). The charges came in retaliation for her work covering human rights and democracy in Vietnam for the *Luat Khoa* legal magazine, which she founded.

Journalist Mohamed Mouloudj, arrested in Algeria in September 2021, spent 13 months in pre-trial detention on terrorism [charges](#) for requesting an interview with a member of the Movement for the Self-Determination of Kabylie (MAK), an opposition group declared a terrorist organization by the government. He initially faced the death penalty, though was eventually sentenced to one year in prison.

One of Brazil's richest men has filed [at least 37 lawsuits](#), many alleging defamation, against journalists and media organizations that have exposed his close ties to the former Bolsonaro administration.

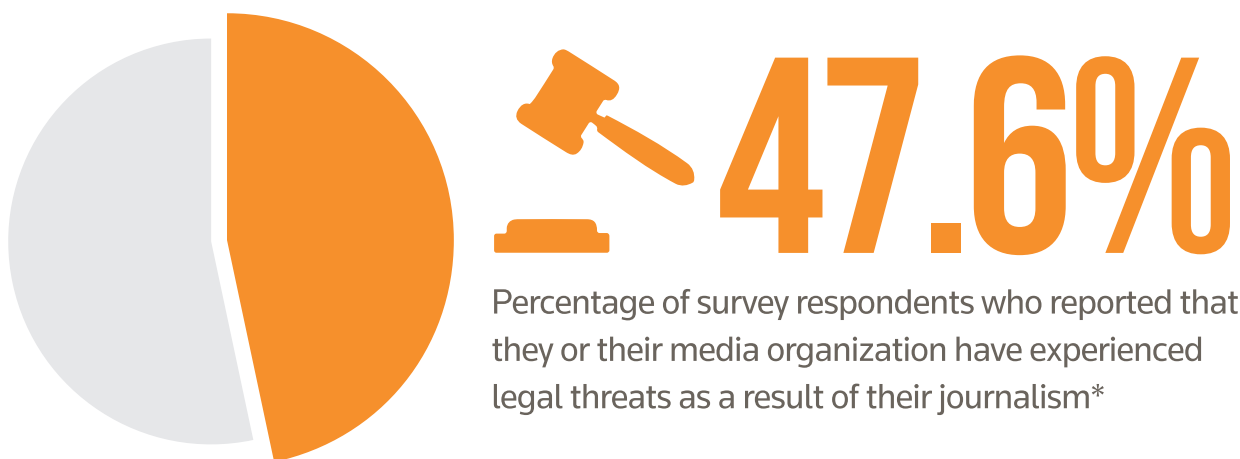
In the last couple of years in the United States, journalists and media organizations have faced civil defamation suits with wildly inflated damage claims brought by former President Donald Trump and his political allies. This includes former Congressman Devin Nunes, who sued CNN for \$435 million

over an article published in 2019 that alleged Nunes had met with a former Ukrainian official in Austria. The suit was dismissed by a federal judge in February 2021, a decision later affirmed by the US federal appeals court.

The purpose of this report is to provide the first step towards a global overview of the weaponization of the law as a prominent threat to media freedom. In doing so, we offer a resource that can be used to empower those seeking to navigate the shifting legal environment and support those working to protect the continued coverage of the world's most sensitive and critical issues – including corruption, organized crime, and human rights.

This is also the first report of its kind to bring together substantial insights into these global legal trends from two significant constituencies: journalists from around the world, and media freedom experts. The report draws on global research conducted through the Tow Center for Digital Journalism, alongside the contributions of dozens of leading media freedom experts and the first-hand experience of nearly 500 journalists from the Thomson Reuters Foundation network, to identify and examine eight key legal threats to the profession. It provides a critical springboard into further research that might map in more detail the scale, nature, and geographic spread of these threats – essential to identifying how best to counter them.

Nearly 50% of journalists in the Foundation's alumni network who responded to a survey said that they or their media organisation were facing legal threats, illustrating the sheer scale of this war on journalism. The physical, emotional and financial consequences are enormous for journalists who are continually facing the risk of going to jail, being bankrupted, or repeatedly being dragged into court. Allowed to spread unchecked, the weaponization of the law will continue to curtail media freedom by hampering coverage of critical public interest matters, undermining accountability, and eroding trust in journalism – with catastrophic effects on democracies and freedoms globally.



* Based on survey responses from 493 journalists in the Thomson Reuters Foundation alumni network

The following are some of the main themes that emerged from the research and from those surveyed:

- **Abuse of defamation laws is a leading legal threat to journalists**

Based on the research and consensus of experts and journalists surveyed, defamation remains one of the most serious threats for journalists. Defamation laws, both criminal and civil, continue to be used all over the world to prevent open public debate and shield powerful individuals from legitimate criticism. Online expression has become a new target for criminal defamation, aligning with a growing trend to criminalize speech on the internet through defamation and insult provisions that are integrated into cybersecurity, anti-terrorism or hate speech legislation. There has also been a rise in civil defamation, which has the potential for excessive damages. This, in turn, encourages self-censorship or the automatic publication of an apology to mitigate the risk of a possible lawsuit.

This troubling development dovetails with the reversal of a more positive trend: the decriminalization of defamation laws, which many countries moved towards during the 2000s and early 2010s. This report shows that a number of countries have reintroduced criminal defamation offenses, expanded or increased penalties under existing laws, or boosted the enforcement of long dormant laws, in an effort to target journalists.

Additionally, this report reveals defamation as the preferred tool for those deploying Strategic Litigation Against Public Participation (SLAPPs), as these charges are increasingly used simply to intimidate and exert undue pressure on the media, regardless of the outcome. This report confirms the rise of SLAPPs against journalists globally, in democracies and non-democracies alike. It also illustrates the increasing costs of this abusive practice, with businesses or individuals filing lawsuits for multi-million-dollar damages in an attempt to bankrupt journalists and media outlets.

- **States are racing to criminalize criticism and social unrest**

Governments around the world are strengthening speech-related crimes, amid growing efforts to shield those in power from criticism. In the last five years, at least 43 states have enacted or amended laws to expand and increase penalties for defamation, anti-terrorist or extremist activity, national security, false news, public disorder, and cybercrimes – laws that are frequently misused to prosecute journalists. In the majority of cases, laws were expanded and tailored to better target speech in the context of electoral or constitutional crises, with the COVID-19 pandemic propelling many of these legislative changes. The increasing regulation of the online space has also offered further opportunities to muffle public interest reporting and monopolize media content.

Unsurprisingly, states facing popular uprisings are resorting to criminal laws that punish state treason (such as Russia and Belarus), or to colonial-era sedition laws to prosecute political activists, journalists, and ordinary citizens advocating for democracy (such as Hong Kong).

These practices are not unique to the world's most repressive regimes. Under Narendra Modi's

administration, India has seen a dramatic increase in the use of its terrorist and sedition laws against journalists. Laws punishing “insulting the president” are not only enforced in Turkey, but are being used in Macky Sall’s Senegal, Emmerson Mnangagwa’s Zimbabwe and in El Salvador under Nayib Bukele.

While these new laws or provisions vary from country to country, they share certain features, including deliberately vague language. They often confer broad powers on authorities to interpret and carry out criminal investigations with limited judicial oversight and procedural safeguards. They specifically target and grant harsher penalties for speech that is disseminated online or via social media. Often, these laws also assert greater government authority over tech companies, forcing businesses to comply with their provisions and remove or make assessments about the legality of content.

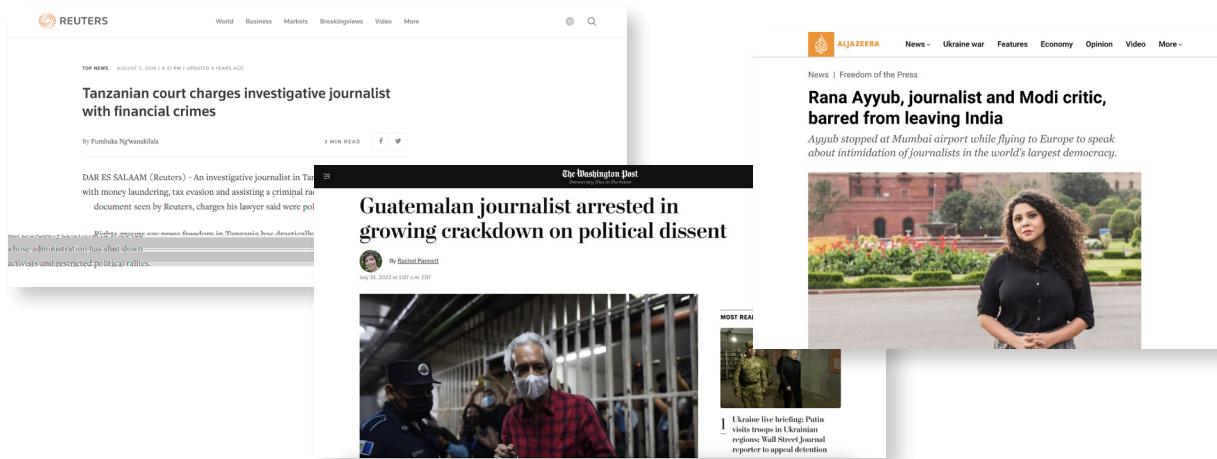
- **There is an increasing reliance on “catch-all” national security and public order offenses to convict journalists**

While laws protecting national security and public order generally serve a legitimate purpose and are expressly permitted under international legal standards, this report shows that “catch-all” national security or public order offenses are becoming a preferred tool to prosecute and secure the conviction of journalists. Often, these offenses punish expression based on the possible impact it could have on national security and public order. The laws are frequently used to suppress domestic political dissent. In the last few years, some states have revised and hardened counterterrorism laws in response to pro-democracy protest movements and the rise of online activism by expanding their reach to individuals expressing dissenting opinions online. Again, these laws lack the precision needed to ensure they are not used maliciously to suppress freedom of expression and the work of the media.



• States are increasingly relying on non-speech related crimes to silence journalists

Alongside prosecutions for speech offenses, national authorities are increasingly accusing, charging and convicting journalists under non-speech related crimes, particularly financial crimes, such as tax evasion, fraud and money laundering. In most instances, the charges are fabricated and politically motivated, though a conviction can result in substantial prison sentences. Charges can also be used to discredit journalists and isolate them from friends and advocacy organizations. Accusing journalists of being thieves, money launderers, and even rapists, is an intentional strategy used to confuse the international community and undermine expressions of solidarity or condemnation. Mounting a legal defense against such accusations, even when unfounded, can be extremely burdensome and costly.



• ‘Clubbing’ is a preferred tactic to secure convictions of journalists

The research shows that criminalization and judicial harassment of journalism varies among countries and can be carried out under a wide variety of laws. However, a number of the cases identified demonstrate that national authorities are taking advantage of their expanded legal systems to bombard journalists with multiple legal charges for each instance of journalistic activity. A single published article might result in combined charges of false news, “insult”, or defamation, along with other charges under broadly defined and all-encompassing offenses such as “undermining state interests,” or “inciting mass disturbances” or “picking quarrels.” This strategy – known as “clubbing” – increases the chances of the journalist’s conviction and the possibility of harsher punishment.

• The weaponization of the law against journalists is a global phenomenon, with notable leaders

Unsurprisingly, Myanmar, Russia and Belarus are leading the way in using the law and its proceedings to crackdown on media freedom. In the last two years, these three countries enacted far-reaching legal reforms that have made it possible to prosecute nearly any act of dissent and criticism. Since the war began in Ukraine, [anti-war prosecutions in Russia against](#) dissidents and government critics have grown at an unprecedented rate. Countries such as Nicaragua and Algeria have followed suit, recently passing a raft of repressive legislation. against dissidents and government critics have grown at an unprecedented rate. Countries such as Nicaragua and Algeria have followed suit, recently passing a raft of repressive legislation.

Several countries from across the democratic spectrum, such as India and Turkey, have used existing legislation, including archaic colonial-era laws, to selectively target and silence journalists. China, Vietnam, Saudi Arabia and Cuba continue to maintain totalitarian control upon society and media, regularly using and updating a complex web of national security legislation and regulations to harass and imprison journalists.

The increase in legal action to stifle journalism is not confined to authoritarian regimes and illiberal democracies, with vexatious lawsuits commonly used to silence journalists in the US, Canada and Australia, and, in recent years, becoming a particularly acute problem in Europe.

- **When used to strengthen media freedom, the law is a powerful tool**

Importantly, the news is not all bad. As they recognize these legal threats, some governments, along with advocacy organizations and legal groups, are developing actions and responses. These range from promoting legal reform to applying diplomatic pressure, to curtail the worst abuses and ensure that the rights of journalists are protected.

Courts have upheld protections for freedom of the press in several countries, issuing landmark decisions on insult laws, sedition, defamation, SLAPPs and the protection of journalistic sources. In various Latin American countries, there has been a positive progressive modification of desacato (contempt) laws, and enhanced protection of sources. Notably, the regional human rights systems, particularly the Inter-American Court of Human Rights, have been steadily expanding protections to journalists and strengthening press freedom. These interpretations, aligned with international standards, can result in tangible legal and policy change, and set a positive precedent for future cases.

- **In summary**

The rule of law is a precious resource that protects free expression, press freedom, and the rights of journalists around the world. But that law is increasingly being abused to curtail media freedom and silence critical voices. These emerging threats that have been identified as key areas of concern are being driven by governments intent on criminalizing dissent, as well as both governments and private actors ratcheting up the misuse of existing legislation to extinguish independent journalism and critical expression. By highlighting these troubling developments through a holistic overview of key experts in the global media freedom ecosystem – as well as through the voices of journalists on the ground – we aim to assist those seeking to defend and protect the fundamental right to free expression to more effectively identify, prevent and defend against growing legal threats.

Advocacy groups, the legal community, democratic governments, intergovernmental organizations, and journalists themselves, all have a key role to play in responding to this phenomenon. Sustained international attention, tangible government action to curb negative legislative trends, and expanded access to legal support to prevent and defend against these threats are urgently needed. This is critical because, if left unchecked, the future of journalism, democracies and free societies are in jeopardy.

METHODOLOGY

The report was carried out in four phases.

First, legal researcher Ona Flores undertook a systematic review of the existing and emerging legal threats to journalists and their impact on media freedom. She assessed national legislation and government regulations, reviewed relevant judicial decisions and jurisprudence, and considered the independence of the judiciary and official regulatory bodies in countries where journalists faced significant legal threats. The registration requirements for both media outlets and journalists were also examined, alongside an evaluation of the ability of journalists' organizations to operate freely. She considered the positive impact of constitutional guarantees for freedom of expression, international landmark rulings and jurisprudence. Flores collected data using publicly available documents, including legal texts, court decisions, news articles and reports by media and civil society groups. Based on this exhaustive process, she compiled a list of the 14 notable legal threats to press freedom.¹

This comprehensive list of legal threats was shared with 37 leading media freedom experts and 493 journalists from around the world, who were consulted and asked to rank the threats based on their potential to result in legal penalties that would silence journalists and stifle their ability to speak truth to power. The research team analyzed these rankings and identified eight legal threats – which form the backbone of this report – that resonated most strongly with both the experts and journalists.

While the journalists and experts aligned on the seriousness of certain threats, it is important to note that there were disparities in the perception of others. This warrants further investigation, and a more forensic understanding will require the exploration of variables such as regional disparities, characteristics – including the gender – of respondents, and the number of active court cases, as well as convictions related to each threat, and the associated sentences.

The media freedom experts were selected by the research team with input from the Thomson Reuters Foundation. These experts come from around the world, several with global experience for their work with international organizations, and others with particular regional expertise in Latin America, East, West, and Southern Africa, the Middle East, Southeast Asia, East Asia, South Asia, Europe and the United States. They represent a range of specializations and were selected based on their credentials, experience, and global and regional perspectives.

¹ (1) defamation and insult laws; (2) strategic lawsuits against public participation (SLAPPs); (3) espionage, treason and foreign influence laws; (4) cyber-libel and other cybercrime provisions; (5) fake news laws; (6) counterterrorism and anti-extremism laws; (7) financial crimes; (8) lese majeste, desacato and seditious libel laws; (9) anti-state propaganda and other anti-state laws; (10) breach of peace/public order laws; (11) resisting/obstructing authority/failure to disperse laws; (12) blasphemy or religion-related offenses; (13) hate speech laws; and (14) immigration laws and regulations.

More than 60% of experts (23) had a legal background, among them prominent media lawyers, advocates, former special rapporteurs on freedom of expression, and scholars. Several are members of the High Level Panel of Legal Experts on Media Freedom which is the independent advisory body to the Media Freedom Coalition, a partnership of states that have pledged to advocate press freedom and the rights of journalists “at home and abroad”. Other experts were selected because of their role as leaders of international and regional press freedom organizations.

The journalists polled are part of the Foundation’s alumni network and represent 106 countries in Latin America and the Caribbean, the Middle East and North Africa (MENA), Sub-Saharan Africa, Europe, North America, and the Asia Pacific (APAC) region. Of the respondents, 76% identified themselves as journalists or editors, with a smaller number of social media managers, researchers, translators, and CEOs participating. Nearly two-thirds of respondents (65.5%) said they had more than a decade of experience in journalism. As noted, 47.6% of survey respondents indicated that they or their media organization had experienced legal threats, a striking statistic that demonstrates the rising tide of legal harassment.

The journalists polled are part of the Thomson Reuters Foundation’s alumni network and represent

106 COUNTRIES



With eight key legal threats mapped, the research team then convened a smaller group of experts to discuss how to respond to and mitigate these legal challenges. The recommendations identified aim to present an initial roadmap of priorities to counter the growing legal threats to journalists and media freedom around the world. They are presented at the conclusion of this report.

Bringing together the perspectives of experts and journalists marks the first step in building a more cohesive overview of how the law is being weaponized against journalists around the world and steers the direction for future research examining these threats.

INTRODUCTION

Our research, coupled with feedback from experts and journalists, shows there is evidence of an unprecedented growth in legal threats to journalists around the world. An increasing number of governments are systematically establishing a hostile legal environment designed to undermine independent journalism. This trend is present in both democratic and non-democratic countries. However, the most concerning examples were observed in authoritarian regimes and in an increasing number of so-called illiberal democracies.

These legal threats to media freedom can take many shapes and forms – from defamation and cybercrime suits to persecution for financial crimes or violations of immigration laws. Eight key legal threats faced by journalists, as identified by media freedom experts and journalists themselves, have been explored in detail below. Each section includes an overview of the legal threat and an analysis of the trendlines, and spotlights cases selected to illustrate the experiences of journalists and media outlets.



THREAT #1 DEFAMATION AND INSULT

Defamation laws protect individuals, including officials, against false statements that are harmful to their reputation. Defamation can be either criminal or civil. Insult laws protect the “honor and dignity” of individuals, including officials, regardless of the truthfulness of the statement. Criminal sanctions may include imprisonment, fines, and prohibitions on writing. Defamation laws exist almost everywhere, but terms and sanctions vary tremendously. Often, they use broad and ambiguous terms to penalize expressions characterized as libel, slander, insult or injury. The retaliatory use of civil defamation laws by public figures is increasingly common and highly problematic.² Civil suits can be costly and financial sanctions may be high and disproportionate.

The use of defamation and insult to silence journalists is not new. However, in the last five years an increasing number of states have enacted or amended laws to expand and increase penalties. The gradual progress towards the decriminalization of defamation has slowed in tandem in all regions except Africa, where momentum remains strong. According to UNESCO³, at least 160 countries still have criminal defamation laws on the

books, down from 166 in 2015. International and regional human rights bodies have recognized that the mere existence of criminal defamation legislation can have a profound chilling effect on press freedom.⁴ Under these laws, journalists face the “constant threat of being arrested, held in pretrial detention, subjected to expensive trials, fines and imprisonment, as well as the social stigma associated with having a criminal record.”

Trendline

Between 2000 and 2010, there was an international consensus around decriminalizing defamation laws. But that trend is now being reversed. For instance, Russia decriminalized defamation in 2010, then recriminalized it in 2012. It has since enacted several harsh reforms – the most recent, in 2020, explicitly criminalized and provided for higher penalties (including imprisonment) for slanderous statements made using unregistered media and the internet.⁵ Cuba’s [new criminal code](#), approved by the Legislative Assembly in 2022, retained criminal defamation laws (defamation, injury and slander) and explicitly included the use of social media to commit these crimes as an aggravating factor.⁶ In 2022, Japan heightened the penalties in its

² United Nations Special rapporteur on the promotion and protection of the rights to freedom of opinion and expression, Irene Khan, Reinforcing media freedom and the safety of journalists in the digital age, A/HRC/50/29, 20 April 2022; European Union Parliament’s Policy Department for Citizens’ Rights and Constitutional Affairs, Safety of journalists and the fighting of corruption in the EU, July 2020.

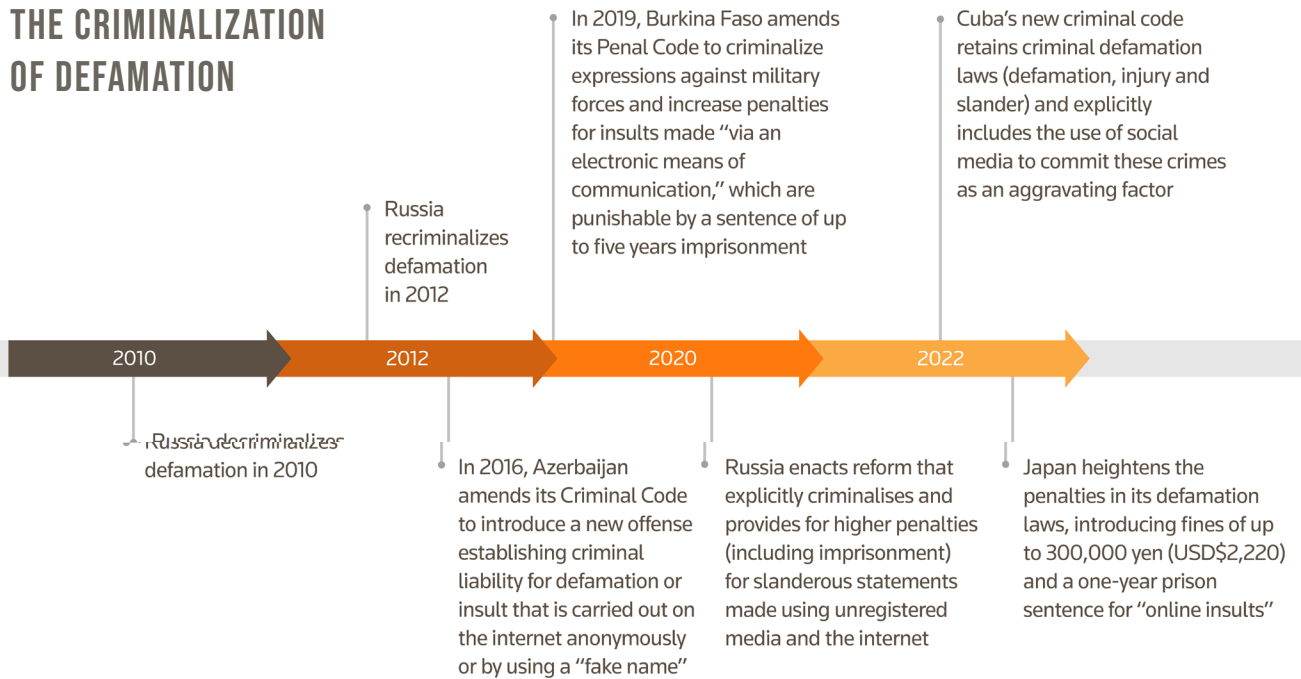
³ UNESCO, World Trends in Freedom of Expression and Media Development, Global Report 2021/2022. Journalism is a public good (2022).

⁴ United Nations Special Rapporteur on the promotion and protection of the rights to freedom of opinion and expression, Frank La Rue, The protection of journalists and media freedom, June 2012, paras 84-85; Inter-American Commission on Human Rights, Special Rapporteur on the Rights to Freedom of Expression, Inter-American Framework on the Right to Freedom of Expression, para. 114. See also, Inter-American Commission on Human Rights, Declaration of Principles on Freedom of Expression, principle 10; African Commission on Human and Peoples’ Rights, Declaration of Principles on Freedom of Expression and Access to Information in Africa, Principles 21-22.

⁵ Criminal Code of the Russian Federation, available in English: <https://cis-legislation.com/document.fwx?rgn=1747>

⁶ Criminal Code of Cuba, available in Spanish: <https://www.parlamentocubano.gob.cu/index.php/codigo-penal>

THE CRIMINALIZATION OF DEFAMATION



defamation laws, introducing fines of up to 300,000 yen (USD\$2,220) and a one-year prison sentence for "online insults." [In 2019 Burkina Faso amended its Penal Code](#) to criminalize expressions against military forces and increase penalties for insults made "via an electronic means of communication," which are punishable by a sentence of up to five years imprisonment.⁷ Indonesia's proposed new criminal code criminalizes insulting the president or vice president.

In Azerbaijan, according to [human rights experts](#), between 2017 and 2019 journalists, bloggers, media workers and media editorial staff were charged 72 times with libel, insult, and reputational damage⁸. In 2016, Azerbaijan [amended its Criminal Code](#) to introduce a new offense (article 148-1) establishing criminal liability

for defamation or insult that is carried out on the internet anonymously or by using a "fake name."⁹

“

Me and my former employer were sued by one of the biggest banks for defamation after we published articles about stock market manipulation by their brokerage division. I won after a trial which lasted between 2014 – 2018, where we changed courts three times and had four different judges. I only fully recovered my judicial expenses in late 2020.

Editor, Romania,
Thomson Reuters Foundation Alumnus

⁷ Amendments to the Criminal Code of Burkina Faso, available in French: <https://perma.cc/VZ3T-NS3V>

⁸ Attacks on journalists, bloggers and media workers in Central Asia and Azerbaijan (2017-2019), available in English: <https://ifi.fund/attacks-on-journalists-bloggers-and-media-workers-in-central-asia-and-azerbaijan-2017-2019/>

⁹ Analysis of Azerbaijani legislation on freedom of expression, available in English: <https://rm.coe.int/azerbaijan-analysis-of-legislation-on-freedom-of-expression-december-2/16808ae03d>

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While acknowledging the right of people who feel unfairly and unlawfully accused of wrongdoings to seek redress through judiciary means, the reality is that this right is only (mis-)used by the powerful to silence their critics. Defamation cases are most commonly handled by judiciary systems that lack the most basic levels of independence towards political and economic forces, and deprive free-minded people from any standard of fair trial.

Ayman Mhanna,
Executive Director, Samir Kassir Foundation



💡 SPOTLIGHT CASES

In January 2022, a judge sentenced Peruvian journalist Christopher Acosta to two years in prison and imposed a \$100,000 fine following a defamation lawsuit brought by politician César Acuña, a former governor and two-time presidential candidate. Acosta is head of investigations at television station Latina Noticias, in Lima, Peru, but the lawsuit stemmed from his book *Money Like Popcorn: Secrets, Impunity, and the Fortune of César Acuña*. In it, Acosta alleged that Acuña has engaged in vote-buying, misappropriation of public funds, and plagiarism. While Acuña subsequently dropped the case against the journalist for personal reasons, the damage had already been done, with Acosta experiencing a lengthy, emotional, and financially heavy diversion from his journalistic work.

Terry Xu, the editor of the Online Citizen website in Singapore, was charged with defamation and jailed in April 2022 for reporting on official corruption. Online Citizen was shut down in 2021 after the country's media regulator rescinded its license, arguing it had failed to disclose its sources of funding.

Olivier Makambu, program director for community broadcaster Radio Communautaire pour le Renouveau du Kwango (RCRK), in the Democratic Republic of Congo, was detained in November 2022, and remains in jail, in connection with a defamation complaint filed by a member of parliament. Makambu covers human rights, corruption, and politics.

+ POSITIVE DEVELOPMENTS

Contradicting the global trend, Africa has experienced a shift towards the decriminalization of defamation laws over the last 20 years, with African courts delivering important decisions affirming that criminal defamation is incompatible with the right to freedom of expression. The Community Court of Justice of the Economic Community of West African States (ECOWAS) ruled on an important case in The Gambia in 2018¹⁰, and in 2019 a decision by the East African Court established that provisions in Tanzania's Media Services Act of 2016 violated freedom of expression.¹¹ Both the Court and the Commission of the African Human Rights System have set jurisprudence on defamation.¹² Sierra Leone repealed criminal libel in 2020. The highest courts in several countries have declared that criminal defamation laws are unconstitutional, including Uganda (2010), Zimbabwe (2016), Kenya (2017), Lesotho (2018), and The Gambia (2018). The Central African Republic and Côte d'Ivoire impose only fines, and not prison sentences, for

criminal defamation. In Europe, the following countries have decriminalized defamation¹³ in recent years: Cyprus, Ireland, Malta, Montenegro, Romania and Serbia. Kazakhstan decriminalized defamation¹⁴ in 2020, and today it is defined as an administrative offense.

In the Americas, the Inter-American Court of Human Rights issued recent landmark rulings recommending that defamation should be a civil and not criminal offense. The first ruling pertained to Costa Rican reporters Moya Chacón y Parrales Chaves (2022)¹⁵; the second to the Ecuadorian daily El Universo in its legal battle with former president Rafael Correa¹⁶ and the third to the sentencing of journalist Alvarez Ramos (2019) in Venezuela.¹⁷

However, of the 35 countries in the region, only Jamaica has fully decriminalized defamation.

¹⁰ ECOWAS, Federation of African Journalists (FAJ) and others v. The Gambia, Judgment of February 13, 2018, <https://globalfreedomofexpression.columbia.edu/cases/federation-african-journalists-faj-others-v-gambia/>

¹¹ East African Court of Justice, Media Council of Tanzania v. Attorney General, Judgement of March 28, 2019, <https://globalfreedomofexpression.columbia.edu/cases/media-council-of-tanzania-v-attorney-general/>

¹² Columbia University, Global Freedom of Expression, Special Collection on Freedom of Expression of the African System of Human and Peoples' Rights, <https://globalfreedomofexpression.columbia.edu/wp-content/uploads/2022/03/Special-Collection-on-the-Case-Law-on-Freedom-of-Expression-African-System-of-Human-and-Peoples%20B4-Rights.pdf>

¹³ European University Institute, Centre for Media Pluralism and Media Freedom, Monitoring Media Pluralism in the Digital Era, 2022, <https://cadmus.eui.eu/bitstream/handle/1814/74712/MPM2022EN-N.pdf?sequence=1&isAllowed=y>

¹⁴ Committee to Protect Journalists, Kazakhstan decriminalizes defamation, but maintains detentions, criminal penalties for speech offenses (2020) <https://cpj.org/2020/07/kazakhstan-decriminalizes-defamation-but-maintains-detentions-criminal-penalties-for-speech-offenses/>

¹⁵ IACtHR, Case of Moya Chacon et al. v. Costa Rica, Judgment of May 23 2022, available in Spanish: https://www.corteidh.or.cr/docs/casos/articulos/seriec_451_esp.pdf

¹⁶ IACtHR, Case of Palacio Urrutia et al. v. Ecuador, Judgment of November 24 2021, <https://globalfreedomofexpression.columbia.edu/cases/palacio-urrutia-v-ecuador/>

¹⁷ IACtHR, Case of Alvarez Ramos v. Venezuela, Judgment of August 30, 2019, <https://globalfreedomofexpression.columbia.edu/cases/alvarez-ramos-v-venezuela/>

THREAT #2 SLAPPS

Known as “Strategic Lawsuits Against Public Participation,” SLAPPS are generally civil actions on behalf of private individuals or entities, sometimes acting with government support. SLAPPS have long been used to silence journalists, but cases have increased substantially since 2015. While the use of SLAPPS is growing in Europe, a recent report from partner organizations of the Council of Europe Platform to Promote the Protection of Journalism and Safety of Journalists¹⁸ identified SLAPPS as a global phenomenon. The specific legal claims and procedures vary, but often involve allegations of civil or criminal defamation, breach of privacy or data protection laws, or infringement of intellectual property. For this reason, a few of the experts consulted noted that SLAPPS could be considered a legal tactic rather than their own category of legal threat. However, the majority of experts considered SLAPPS to be a distinct legal threat.

SLAPPS are, by definition, unfounded and lack merit. Plaintiffs do not generally seek to prevail and find redress, but rather to harass journalists into silence. Experts **agree** that one core characteristic of this kind of action is the disparity of power and resources between the

plaintiff and the defendant.¹⁹ Others describe them as baseless and excessive in nature. Corporations and wealthy individuals often **spend vast sums** to turn the judicial system against journalists, burying them in legal filings that are costly and time consuming to address.²⁰ Even though most cases are eventually dismissed, these lawsuits have a significant impact on the silencing of free speech. A review of cases in different countries suggests that defamation laws are the preferred vehicle for SLAPPS cases. In some instances, SLAPPS are employed alongside state prosecutions as part of a coordinated effort to overwhelm journalists and media outlets and undermine their legal defense.

Trendline

As noted, SLAPPS are a particularly acute problem in Europe. The partner organizations of the Council of Europe’s Platform to Promote the Protection of Journalism and Safety of Journalists reports an increasing number of serious threats to the safety of journalists and media freedom in Europe, including multiple cases of judicial intimidation. “Betting on the power of money to kill stories and deter further reporting, these lawsuits are an effective tool of censorship in Europe,” the report notes.²¹

¹⁸ Council of Europe Platform to Promote the Protection of Journalism and Safety of Journalists, Annual Report

by the partner organizations (2021) <https://rm.coe.int/final-version-annual-report-2021-en-wanted-real-action-for-media-freed/1680a2440e>

¹⁹ European Union, COMMISSION RECOMMENDATION (EU) 2022/758 of 27 April 2022 on protecting journalists and human rights defenders who engage in public participation from manifestly unfounded or abusive court proceedings (‘Strategic lawsuits against public participation’), <https://eur-lex.europa.eu/legal-content/ENG/TXT/PDF/?uri=CELEX:32022H0758&from=EN>

²⁰ International Center for Not-For-Profit Law (ICNL), Protecting Activists from Abusive Litigation (2020), <https://www.icnl.org/wp-content/uploads/SLAPPS-in-the-Global-South-vf.pdf>

²¹ Council of Europe Platform to Promote the Protection of Journalism and Safety of Journalists, Annual Report by the partner organizations (2022) <https://rm.coe.int/platform-protection-of-journalists-annual-report-2022/1680a64fe1>

But SLAPPs are increasingly a threat to journalists across all continents. A recent report by UNESCO²², titled “The misuse of the judicial system to attack freedom of expression,” documents a rise in SLAPPs “by powerful actors that want to silence critical voices and undermine scrutiny.”

SLAPPs are present in authoritarian regimes, backsliding democracies, and democratic states. Legal experts and journalists point out the [shocking murder of Maltese investigative journalist Daphne Caruana Galizia, in 2017, as an inflection point](#)²³ in terms of the perception of SLAPPs. Caruana Galizia was battling 47 civil and criminal defamation lawsuits filed by businesspeople and politicians at the time of her murder via car bomb. SLAPPs are a common practice in Latin America, with Patricia Campos Mello and the newspaper *Folha de S.Paulo* in Brazil battling abusive defamation and false news civil suits. These were filed by Brazilian businessman Luciano Hang in response to a story alleging he was part of a group that financed a campaign against the then opposition Workers Party via WhatsApp. In Thailand, the company Thammakaset Co. Ltd has targeted human rights defenders, journalists and academics for reporting on working conditions at a poultry farm they operate. The company filed at least six criminal defamation complaints against those who had merely shared information on social media. One of the defendants was journalist Suchanee Cloitre, against whom Thammakaset filed a complaint in March 2019 under sections 326 and 328 of the Criminal Code, concerning

defamation and libel. The journalist was found guilty and sentenced to two years in prison in December 2019 over a tweet alleging labor rights violations. An appeals court overturned the charges in October 2020.

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The practice of abusing legal systems by those in power to silence critics has reached global proportions. Its damage is far-reaching and curbing it is an imperative for democracy and maintaining peace.

Snezana Green,
Senior Counsel, Legal and Policy Affairs for the
Media Development Investment Fund



²² UNESCO, The misuse of the judicial system to attack freedom of expression (December 2022), <https://unesdoc.unesco.org/ark:/48223/pf0000383832>

²³ Columbia Journalism Review, A Nefarious and Hidden Threat to Journalists Rises (September 2022), <https://www.cjr.org/analysis/slapp-lawsuit-cadwalladr-ressa.php>

SPOTLIGHT CASES

The Warsaw-based *Gaceta Wyborzca* has been hit with at least 90 lawsuits²⁴ since the ruling Law and Justice Party, PiS, came to power in 2015. Most were filed by various state-controlled agencies, PiS politicians, and government ministries. SLAPPs are a favored strategy in Europe and in Poland, where *Gaceta Wyborzca* is the leading national daily. The paper claims that almost identical lawsuits are filed each time a new critical article is published. In one instance, a government minister filed a claim in his official capacity, and then another identical petition as a private citizen. This technique of filing multiple lawsuits in response to a single article is sometimes referred to as “clubbing.”

Malaysiakini, the Malaysian online newspaper published in Malay, English, Chinese and Tamil, has been hit with a flood of harassing lawsuits. Former deputy prime minister Ahmad Zahid Hamidi, who has been investigated for corruption, is seeking a staggering \$53 million in damages from Malaysiakini, for its coverage of his corruption trial.

As noted, SLAPPs are often employed alongside state prosecutions. This is the case with *elPeriódico*, the Guatemalan daily which, because of its precarious financial situation, has recently suspended its print publication and is now exclusively online. *elPeriódico* has 40 SLAPPs open against it, many of them private civil actions. Meanwhile, its president and founder José Rubén Zamora Marroquín has been in jail since July 2022, accused of money laundering, blackmail and influence peddling. The paper has frequently exposed government corruption and has often been targeted by officials, particularly following the “Guatemala Spring” of 2015, when its corruption coverage led to the arrest of dozens of government officials, including then President Otto Pérez Molina.

²⁴ International Press Institute, Increased attempts to silence Poland’s free media through lawsuits (Gazeta Wyborzca), June 2022, <https://ipi.media/increased-attempts-to-silence-polands-free-media-through-lawsuits-gazeta-wyborzca/>

On April 27 2022, the [European Commission issued Recommendation 2022/758](#) “on protecting journalists and human rights defenders who engage in public participation from manifestly unfounded or abusive court proceedings (‘Strategic lawsuits against public participation’ - SLAPPs)”.²⁵ The recommendation recognizes the importance of protecting journalists against SLAPPs and the urgent need to implement measures that “prevent the phenomenon from growing roots in the Union.” Specifically, the recommendation calls on states to review their defamation laws to ensure that “existing concepts and definitions cannot be abused against journalists” and that “penalties are not excessive and disproportionate.”

The UN Human Rights Council’s 2020 Resolution on the Safety of Journalists made explicit reference, for the [first time](#), to defamation laws and SLAPPs.²⁶ In the resolution, the Council reiterated its call on states to “ensure that defamation and libel laws are not misused, in particular through excessive criminal sanctions, to illegitimately or arbitrarily censor journalists and interfere with their mission of informing the public, and where necessary to revise and repeal such laws, in compliance with States’ obligations under international human rights law.”

THREAT #3 ESPIONAGE, TREASON AND FOREIGN INFLUENCE

“Espionage,” “treason,” “revealing state secrets,” “collusion against the state,” and “collaboration with foreign entities,” are just some of the national security laws used to sanction freedom of expression and curtail media freedom. While laws protecting national security serve a legitimate purpose and are expressly permitted under international legal standards, the drafting language is often both sweeping and vague, allowing governments to silence and harass journalists reporting on sensitive topics such as organized crime, corruption, terrorist attacks, human rights issues, military conflict, and insurgency and counterinsurgency. National security laws are often used to suppress domestic political dissent. For example, China routinely imprisons journalists for alleged violations of national security laws. This includes Zhang Haitao, political commentator for Radio Free Asia and Voice of America, who was convicted in 2016 and sentenced to 19 years in prison for “disclosing state secrets abroad” because she criticized the Beijing regime on social media and in interviews with foreign media.²⁷

Trendline

When it comes to the use of espionage laws to silence the media, China and Russia are two of the world’s worst offenders. But these are not

isolated cases. Nicaragua recently declared 94 prominent dissidents, including journalists, as traitors and cancelled their citizenships. In Belarus, the government of Alexander Lukashenko launched a massive crackdown on independent media following protests prompted by a disputed 2020 presidential election, with several journalists and activists charged and convicted of treason. Bangladeshi journalists have been accused of treason and espionage in recent years, which has led to self-censorship. And in Iran, two female reporters who broke the story of Mahsa Amini, whose 2022 death in the custody of Iran’s morality police sparked massive protests, were accused of being CIA spies.²⁸

Russian authorities have **systematically prosecuted**²⁹ journalists and activists who questioned the annexation of Crimea, alleging violations of national security laws. An egregious example is the conviction on treason charges of journalist Ivan Safronov. In September 2022, Safronov was sentenced to 22 years in prison. He was detained in July 2020 and accused of revealing state secrets to foreign intelligence agencies (to Czech intelligence and a German national) about Russian arms deals in the Middle East and Africa in 2017, while he was working for the

²⁷ Reporters without Borders, At least 10 citizen-journalists could die in China’s jails (October 2019), [At least 10 citizen-journalists could die in China’s jails | RSE](#).

²⁸ Washington Post, Iran charges female journalists who helped break Amini’s story with being CIA spies, (October 2022), <https://www.washingtonpost.com/world/2022/10/29/iran-journalists-charged-mahsa-amini-hamed-mohammadi/>

²⁹ Committee to Protect Journalists, Crimean Tatar civic journalists risk persecution to cover their community in Russian-annexed Crimea (September 2020), <https://cpj.org/2020/09/crimean-tatar-civic-journalists-risk-persecution-to-cover-their-community-in-russian-annexed-crimea/>

leading daily business newspaper, Kommersant. According to news reports, Safronov worked as a military affairs reporter for the paper, before becoming an adviser to the head of the Russian space corporation Roscosmos.

China's [Criminal Code](#) outlines a range of national security crimes.³⁰ Article 102, for example, states that "whoever colludes with a foreign State to endanger the sovereignty, territorial integrity and security of the People's Republic of China shall be sentenced to life imprisonment or fixed-term imprisonment of not less than 10 years." A number of journalists have been convicted under this and other provisions. Journalist Huang Qi was convicted in July 2019 and sentenced to 12 years in prison for "disclosing state secrets abroad." Huang, founder of the 64 Tianwang human rights news website, had been actively reporting on corruption and human rights abuse cases in China, according to Reporters Without Borders. Political commentator Zhang Haitao's conviction and 19-year sentence was for "incitement to subversion" and "disclosing state secrets abroad" after she criticized Beijing in interviews with foreign media. Prosecutions under these offenses are often preceded, or followed by, the designation of the media outlets for which the reporters work as "foreign hostile."

In another striking example, this time from

Iraq, Kurdish journalists Sherwan Amin Sherwani and Guhdar Zebari were convicted of espionage in 2021 following an accusation "of being part of a group aimed at gathering security information and intelligence about Iraqi Kurdistan and relaying this information to foreign parties for the purpose of destabilizing the region."

"Foreign agents" laws are also weaponized to muzzle the media. Under these laws, journalists who receive foreign funding, or are affiliated with or distribute the content of foreign entities, can be labeled as foreign agents. Once designated, they may be banned from covering politics, subjected to heavy fines, and have their websites blocked, and can be imprisoned for non-compliance. The Russian Federation adopted the world's most sweeping foreign agent law in 2012 and has expanded its scope and application over time. The law has been used to [stigmatize and silence](#) media and journalists,³¹ and the Venice Commission and the European Court held that the legislation was incompatible with the European Convention on Human Rights.³² In the United States, several foreign news outlets have been [required to register as foreign agents](#), a move criticized by [press freedom advocates](#). In 2020, Nicaragua also adopted a draconian [Foreign Agents Law](#)³³, adding more tools to the regime's arsenal of repressive legal measures. As of January 2023, a loosely worded, wide-

³⁰ Criminal Code of the Peoples' Republic of China, <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/5375/108071/F-78796243/CHN5375%20Eng3.pdf>

³¹ Council of Europe, Safety of Journalists Platform, Annual Report by the partner organizations to the Council of Europe Platform to Promote the Protection of Journalism and Safety of Journalists (2022), p. 52, <https://rm.coe.int/platform-protection-of-journalists-annual-report-2022/1680a64fe1>

³² European Court of Human Rights, ECODEFENCE v. Russia, Judgment of June 14 2022, <https://globalfreedomofexpression.columbia.edu/cases/ecodefence-v-russia/> and Venice Commission, CDL-AD(2021)027-e Russian Federation - Opinion on the Compatibility with international human rights standards of a series of Bills introduced to the Russian State Duma between 10 and 23 November 2020, to amend laws affecting "foreign agents", adopted by the Venice Commission at its 127th Plenary session (Venice and online, 2-3 July 2021), [https://venice.coe.int/webforms/documents/?pdf=CDL-AD\(2021\)027-e](https://venice.coe.int/webforms/documents/?pdf=CDL-AD(2021)027-e)

³³ Nicaragua's Law on the Regulation of Foreign Agents, <http://legislacion.asamblea.gob.ni/normaweb.nsf/9e314815a08d4a6206257265005d21f9/3306286cd4e82c5f06258607005fdf6b>

ranging national security bill is currently being considered by the House of Lords in the United Kingdom, which makes it a criminal offense to publish or disclose protected information that could prejudice the UK and assist, directly or indirectly, a foreign power. A public interest defense for journalists has not yet been included, putting journalists at risk of jail time if reporting on issues relating to governance and security or receiving grants from foreign civil society organizations.

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All too often, governments use and abuse laws meant to protect national security to silence journalists and stifle investigative reporting. Vaguely worded and broadly applied legislation has been used to target journalists not just in countries with poor press freedom records such as Belarus, China and Russia, but also puts at risk those in democracies. The UK’s proposed new national security bill is one such example of a law that could prevent reporting on wrongdoing by the country’s military or intelligence agencies.

Jodie Ginsberg,
President, Committee to Protect Journalists



SPOTLIGHT CASES

In July 2022, Katsiaryna Andreyeva, a correspondent for the Poland-based Belsat TV in Minsk, Belarus, was found guilty of “state treason” after being accused of “giving away state secrets,” and sentenced to eight years in prison. The trial was held behind closed doors and kept secret. She was already in jail serving a two-year prison sentence after being detained in November 2020 while livestreaming demonstrations against President Alexander Lukashenko, according to the CPJ.

Omar Radi, reporter for independent news website Le Desk, in Morocco, was convicted of espionage and illegally receiving foreign funding, and sentenced to six years in prison in July 2021. An award-winning investigative reporter and human rights activist, Radi has published articles about land grabs and corruption, exposing high-level officials.

Before he was arrested and prosecuted, Radi was constantly harassed, smeared on websites linked to security services and had spyware intrusion on his smartphone. He was also convicted of sexual assault, a charge that local advocacy groups claimed was equally absurd, and part of a pattern of reprisal.

In Bangladesh, Rozina Islam, a leading investigative journalist with the daily Prothom Alo newspaper in Bangladesh, spent a week in jail in May 2021 after exposing corruption in the country’s health sector during the COVID-19 pandemic. She was released from jail after being granted bail by a local court on the condition that she pay a bond of Tk 5000 (USD\$47) and surrender her passport to the authorities. Rozina was allegedly harassed and assaulted during her detention.

POSITIVE DEVELOPMENTS

In June 2022, in the case of ECODEFENCE v. Russia³⁴ the European Court of Human Rights stated that to label any organization as a foreign agent “was unjustified and prejudicial” with “a strong deterrent and stigmatizing effect” on operations of the organizations.

The Court held that “the cumulative effect of these restrictions – whether by design or effect – [was] a legal regime that place[d] a significant ‘chilling effect’ on the choice to seek or accept any amount of foreign funding.”

³⁴ Columbia University, Global Freedom of Expression, <https://globalfreedomofexpression.columbia.edu/cases/ecodefence-v-russia/>

THREAT #4 CYBER LIBEL AND OTHER CYBERCRIME PROVISIONS

More than 150 countries around the world have cybercrime laws on the books.³⁵

Many are overly broad and vaguely worded provisions that criminalize online speech. The most common offenses are “cyber libel,” “cyberterrorism,” “online blasphemy,” “online hate speech,” “content against decency and modesty online,” “content undermining the state or the constitution,” and “incitement to public disorder.” Many recently adopted laws criminalize publishing false news that undermines state interests, including the “prestige of the state,” “national unity,” “public order,” and “public health,” among others. The majority of these laws also include non-speech offenses that threaten freedom of expression, publication, and the press. Provisions related to “interference and interception,” “unlawful wiretapping,” and publication of private data or images, have been used to accuse and prosecute journalists reporting on matters of public interest. Cybercrime laws also tend to grant investigators sweeping powers, with limited or no judicial oversight or procedural safeguards. Cybercrime laws have been cited to justify the use of mass surveillance and state censorship of online content.

This is likely to be a growing risk area, as the media industry has shifted to a largely online presence. Beyond publishing online, journalism

has become interactive, involving discussions amongst consumers of journalistic content and journalists. Dangers also arise due to the interface between journalistic activities and electronic technology, including the utilization of telecoms, the use of the internet for news gathering and research, and email for communications.

Trendline

Cybercrimes have become a much-abused catch-all offense, enacted and enforced in authoritarian regimes and backsliding democracies. One egregious example is Pakistan, where the Prevention of Electronic Crimes Act (PECA)³⁶ has been used to target the press, with several journalists having been charged or summoned by the authorities under defamation offenses. In Nicaragua, another striking example, the Special Cybercrime Law³⁷, adopted in October 2021, punishes with up to four years in prison those who make “accusations against honor or prestige, discloses secrets, to the detriment of an individual or an entity he/she represents or in which he/she has an interest,” as stipulated in Article 28. Egypt’s Anti-Cyber and Information Technology Crimes Law, adopted in 2018³⁸, legalizes the blocking of websites and surveillance. Mali’s 2019 Law n° 2019-056 on the Suppression of Cybercrime³⁹ also includes

³⁵ <https://unctad.org/page/cybercrime-legislation-worldwide>

³⁶ Pakistan’s Prevention of Electronic Crimes Act: https://na.gov.pk/uploads/documents/1470910659_707.pdf

³⁷ Nicaragua’s Special Cybercrime Law: [http://legislacion.asamblea.gob.ni/normaweb.nsf/\(\\$All\)/803E7C7FBCF44D7706258611007C6D87](http://legislacion.asamblea.gob.ni/normaweb.nsf/($All)/803E7C7FBCF44D7706258611007C6D87)

³⁸ Egypt’s Anti-Cyber and Information Technology Crimes Law, <https://www.loc.gov/item/global-legal-monitor/2018-10-05/egypt-president-ratifies-anti-cybercrime-law/>

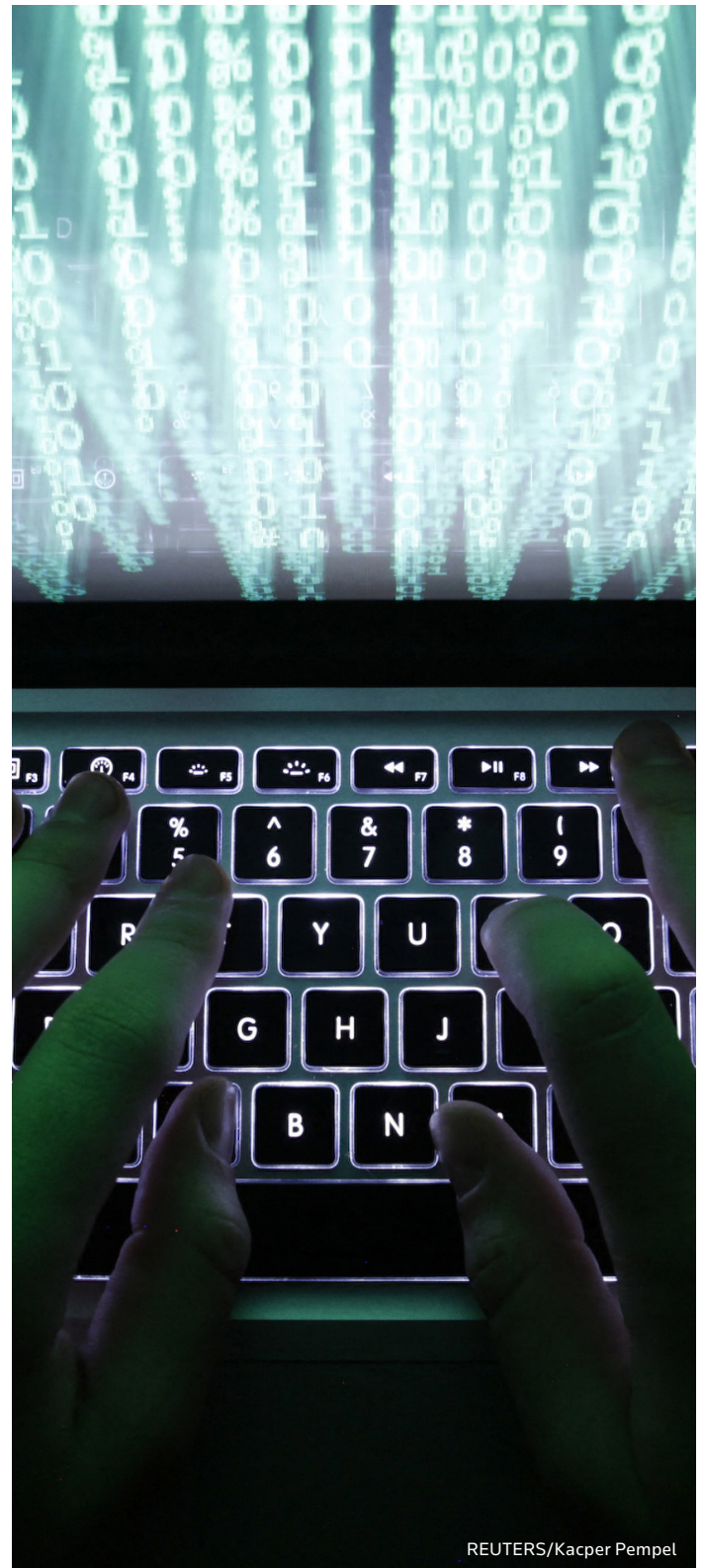
³⁹ Mali’s Law n° 2019-056 on the Suppression of Cybercrime: <https://cipesa.org/2020/02/new-mali-cybercrime-law-potentially-problematic-to-digital-rights/>

vague and overly broad provisions punishing insults made through an information system (Article 21) with penalties ranging from six months to 10 years imprisonment or high fines, or both. The Palestinian Cybercrime Law of 2018 criminalizes the establishment or administration of a website that publishes news deemed to endanger the “integrity of the Palestinian state, the public order or the internal or external security of the state.”⁴⁰

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Some countries are now setting up specific departments within the criminal justice system to investigate and prosecute journalists, mostly under cybercrime legislation. Where offenses like defamation are decriminalized in a few African countries, semblances of such legislation are re-introduced in mostly cybercrime laws. Media freedom online is now increasingly under threat.

Catherine Anite,
Founding Director of the Freedom of
Expression Hub and member of the High Level
Panel of Legal Experts on Media Freedom



REUTERS/Kacper Pempel

⁴⁰ United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Communication of August 16 2017, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=23296>

💡 SPOTLIGHT CASES

The defining prosecution for cyber libel targeted the groundbreaking Philippine news outlet Rappler and its co-founder and CEO Maria Ressa, who in 2021 was awarded the Nobel Peace Prize, along with Russian journalist Dmitri Muratov. The Philippine government has opened more than two dozen individual cases against Ressa, Rappler and its employees since 2018, 18 of which relate to cyber libel or libel, plus seven more for tax evasions or other securities law violations. Before the January 2023 acquittal of a tax evasion charge, Ressa was facing up to 100 years in jail if convicted of all charges brought against her.

The case involving Frank Cimatú, who is a Rappler contributor, was also prominent. He was convicted in December 2022 of cyber libel over a 2017 Facebook post that alleged government corruption. While Cimatú has appealed and is free on bail, the court has barred him from covering politics in the northern region of Luzon and imposed a fine of 300,000 pesos (USD\$5,385) in moral damages.

In Jordan, Palestinian journalist Daoud Kuttab, the director of the Community Media Network, Radio al-Balad, and Amman Net, was detained in March 2022 at Amman's airport by cybercrime police. His alleged crime stems from a 2019 article which claimed that a Jordanian-American investor has been jailed for holding a stolen check. Kuttab has been released pending trial.



THREAT #5 FAKE NEWS (INCLUDING HEALTH EMERGENCY-RELATED FAKE NEWS)

Numerous countries are using “fake news” laws that already exist to punish and silence the media. There has also been a flurry of new laws, including criminal statutes enacted (or proposed) to combat online disinformation. These laws are frequently used to manage information of all sorts, including critical discourse. Fake news laws regularly target information about public health, the economy, public order, and national security. Many were adopted in the context of the COVID-19 pandemic or other emergencies. Some fake news laws overlap with cybercrime legislation described in the previous section, in that they establish prohibitions on the dissemination of information online, including “false news,” “rumors,” and “non-objective,” “inaccurate” or “malicious” content. In March 2017, the UN and regional human rights special rapporteurs for freedom of expression issued a Joint Declaration expressing their view that criminalizing the sharing of information based

on vague and ambiguous ideas, such as “false news,” is incompatible with international human rights norms and standards.⁴¹

Trendline

A December 2022 report by UNESCO⁴² noted that “since the start of the COVID-19 pandemic, journalists have faced charges related to spreading disinformation or rumors, endangering public health, inciting public violence, and not complying with emergency restrictions imposed by governments.” The International Press Institute also documented a “rush” to pass fake news regulations coinciding with the pandemic. Research from the CPJ shows an increase in the number of journalists jailed on “fake news” or “false news” charges.⁴³

In recent developments, [Turkey](#), [Russia](#), [Greece](#), [Tajikistan](#), [Nicaragua](#)⁴⁴, [Cuba](#)⁴⁵, [Singapore](#),⁴⁶ [Vietnam](#)⁴⁷, [Malaysia](#)⁴⁸, [Myanmar](#)⁴⁹, [Mauritania](#)⁵⁰, [Tanzania](#)⁵¹, [Burkina](#)

⁴¹ Joint declaration on Freedom of Expression and “Fake News”, Disinformation and Propaganda (2017), <https://www.osce.org/files/f/ documents/6/8/302796.pdf>

⁴² UNESCO, The misuse of the judicial system to attack freedom of expression (December 2022), <https://unesdoc.unesco.org/ark:/48223/pf0000383832>

⁴³ Committee to Protect Journalists, Amid COVID-19, the prognosis for press freedom is dim. Here are 10 symptoms to track (June 2020), <https://cpj.org/reports/2020/06/covid-19-here-are-10-press-freedom-symptoms-to-track/>

⁴⁴ Nicaragua’s Special Law on Cybercrime, available in Spanish: [http://legislacion.asamblea.gob.ni/normaweb.nsf/\(SAII\)/803E7C7FBCF44D7706258611007C6D87](http://legislacion.asamblea.gob.ni/normaweb.nsf/(SAII)/803E7C7FBCF44D7706258611007C6D87)

⁴⁵ Criminal Code of Cuba, available in Spanish: <https://www.parlamentocubano.gob.cu/index.php/codigo-penal>

⁴⁶ Singapore’s Protection from Online Falsehoods and Manipulation Act 2019, <https://sso.agc.gov.sg/Act/POFMA2019?WholeDoc=1>

⁴⁷ Vietnam’s Law on Cybersecurity, <https://www.economica.vn/Content/files/LAW%20%26%20REG/Law%20on%20Cyber%20Security%202018.pdf>

⁴⁸ United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Communication of March 25, 2021, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=26287>

⁴⁹ Myanmar Junta’s Cybersecurity Bill, https://www.hrw.org/sites/default/files/media_2022/02/220127%20Cyber-Security-Bill-FN.pdf

⁵⁰ Mauritania’s Law on the fight against the manipulation of information, available in French: <https://www.msgg.gov.mr/sites/default/files/2021-04/J.O.%201467F%20DU%2015.08.2020.pdf>

⁵¹ Tanzania’s Electronic and Postal Communications (Online Content) Regulations, 2020, [https://www.tcra.go.tz/uploads/documents/sw-1619088125-The%20Electronic%20and%20Postal%20Communications%20\(Online%20Content\)%20Regulations,%202020.pdf](https://www.tcra.go.tz/uploads/documents/sw-1619088125-The%20Electronic%20and%20Postal%20Communications%20(Online%20Content)%20Regulations,%202020.pdf)

[Faso](#)⁵², [Qatar](#)⁵³ and [Algeria](#)⁵⁴ all adopted and proposed new legislation (or made changes to administrative and penal codes) to criminalize the dissemination of “fake” or “false” news and information. Many of these “anti-fake news” provisions (in [Hungary](#)⁵⁵, [Puerto Rico](#)⁵⁶, the [Philippines](#)⁵⁷, [Taiwan](#)⁵⁸, [Thailand](#)⁵⁹, [South Africa](#)⁶⁰, [Botswana](#)⁶¹, and [Lesotho](#)⁶²) were put in place during the height of the COVID-19 pandemic to penalize the dissemination of health-related false information, but their impact was to severely restrict the free flow of information at a critical time.

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I was subjected to investigations by the Egyptian Public Prosecution that lasted for a whole day, on charges of publishing false news that would harm national security, although the news about which I was investigated was obtained from official documents. At the end of the investigation, the Public Prosecution ordered my release with a financial guarantee from the police station where I was abused.

Editor, Egypt,
Thomson Reuters Foundation Alumna

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The global trend of prohibiting, removing, declaring unlawful, criminalizing or sanctioning fake news and disinformation undermines the basic values of free speech and journalistic freedom. Laws on fake news and disinformation are opening a Pandora’s box, as these laws by their nature can be very broadly interpreted or lead to arbitrary application in breach of international standards on the right to freedom of expression and information. Such laws also hold the risk of being abused by public authorities or private claimants in order to silence or intimidate persons participating in public debate or reporting on matters of interest for society.

Dirk Voorhoof,
Professor Emeritus for Freedom of Expression,
Ghent University

⁵² Amendments to the Criminal Code of Burkina Faso, available in French: <https://perma.cc/VZ3T-NS3V>

⁵³ United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and the Special Rapporteur on the situation of human rights defenders, Communication of April 14, 2020, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=25158>

⁵⁴ <https://cpj.org/2020/04/algeria-blocks-3-news-websites-and-criminalizes-fa/>

⁵⁵ Hungary’s Act XII of 2020 on the containment of coronavirus, <https://perma.cc/9LMR-YS3L>

⁵⁶ Puerto Rico’s Law 35/2020, <https://www.lexjuris.com/lexlex/Leyes2020/lexl2020035.htm>

⁵⁷ Philippines’ COVID-19 Emergency Declaration, <https://legacy.senate.gov.ph/Bayanihan-to-Heal-as-One-Act-RA-11469.pdf>

⁵⁸ Taiwan’s Special Act for Prevention, Relief and Revitalization Measures for Severe Pneumonia with Novel Pathogens, <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=L0050039>

⁵⁹ Statement by the Prime Minister of Thailand, <https://www.thaigov.go.th/news/contents/details/27839>

⁶⁰ <https://www.article19.org/resources/prohibitions-of-false-covid-information-must-be-amended/>

⁶¹ Botswana’s Emergency Powers (COVID-19) regulations, 2020, <https://bw.usembassy.gov/wp-content/uploads/sites/125/Emergency-Powers-COVID-19-Regulations-2020.pdf>

⁶² Lesotho’s Public Health (COVID-19) regulations, 2020, <https://www.gov.ls/wp-content/uploads/2020/04/PUBLIC-HEALTH-COVID-19-REGULATIONS-PDF.pdf>

SPOTLIGHT CASES

Lina Attalah is the founder and editor of news site Mada Masr, based in Cairo, Egypt. Attalah and four other Mada Masr journalists were charged with publishing fake news, misusing social media and insulting members of Parliament – stemming from an article that the media outlet published in late August 2022 on corruption in the Nation’s Future political party. The party is closely associated with President Abdel Fattah el-Sisi. It is not clear whether prosecutors will pursue the case and bring it to trial. Under the government of el-Sisi, Egypt has muzzled the news media, jailing dozens of journalists and blocking critical news sites, including Mada Masr.

Maria Ponomarenko, a St Petersburg-based correspondent for the Siberian news website RusNews, was arrested in April 2022 and charged with discrediting Russia’s armed forces via the publication of “fake” social-media posts

about the war in Ukraine. Ponomarenko said in a court hearing that the conditions of her detention led her to attempt suicide, her media outlet reported. She was later transferred to house arrest. She faces up to 10 years in prison if convicted.



THREAT #6 COUNTER-TERRORISM AND ANTI-EXTREMISM LAWS

Counter-terrorism provisions are perhaps the most punitive and repressive of all national security laws. They often conflate legitimate terrorist threats with broader issues of national security and public order. Offenses frequently used against journalists include “praising or glorifying terrorism,” “spreading terrorist ideas or terrorist propaganda,” or “supporting/communicating with/harboring terrorist organizations.” Adopted globally in **most countries** following the September 11, 2001 attacks on the United States and onset of the “War on Terror,” these laws have undergone constant reform.⁶³

Anti-extremism laws are a mix of anti-hate speech and national security/public order laws. They penalize arousing racial, national, religious, or other social hostility or strife on the grounds of racial, national, religious, linguistic, or other social affiliation, as well as the production, storage, and dissemination of “extremist materials,” or making calls for extremist activity. Criminal provisions aimed at preventing “cyberterrorism” and other uses of the internet and digital technologies for terrorist purposes are also widespread. These laws generally punish the use of the internet to: incite, advertise, and glorify terrorism; engage in fundraising for, and financing of, terrorism; provide training for terrorism; and recruit for terrorism. They also restrict the use

of anonymity and encryption programs in the transfer and storage of data – technologies that journalists often rely on to protect their sources.

Trendline

In the last few years, many countries have increased penalties and created new vaguely-worded terrorism or extremism offenses that are used to crack down on dissent. For instance, Belarus adopted new legislation that introduces the death penalty for “attempts to carry out acts of terrorism.”⁶⁴ Particularly at risk are journalists covering mass pro-democracy or separatist movements involving ethnic minorities. Some countries have adopted legislation to counter “extremism” in addition to anti-terrorism laws, though “extremism” is often poorly defined. In Russia, these laws have been used to harass political opponents, journalists, human rights groups, demonstrators and some religious groups and, more recently, to label as extremists those individuals who have participated in anti-government protests or criticized Russia’s invasion of Ukraine. In March 2022, the radio station Ekho Moskvyy was ordered off the air for supposedly issuing “information calling for extremist activity” and “deliberately false information” about the Russian military. The board of directors then voted to liquidate the radio channel and shut down Ekho’s website. India, Myanmar, Pakistan, Cameroon,

⁶³ Center for Strategic and International Studies, Human Rights Initiative, Counterterrorism Measures and Civil Society (2018), https://csis-website-prod-s3.amazonaws.com/s3fs-public/publication/180322_CounterterrorismMeasures.pdf

⁶⁴ Amnesty International, Belarus: New death penalty law is the ultimate attack on human rights (May 2022), <https://www.amnesty.ie/belarus-new-death-penalty-law/>

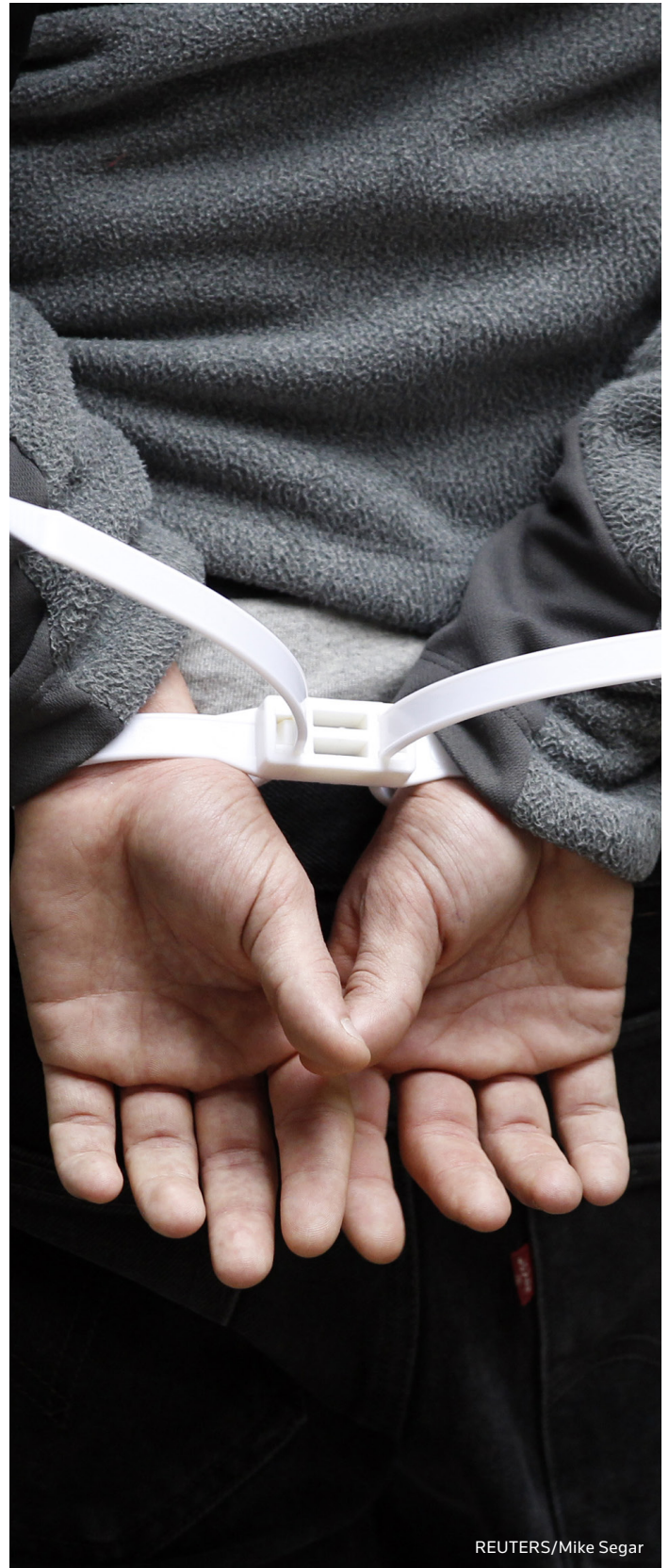
Mozambique, Egypt⁶⁵, Algeria, and Saudi Arabia are other countries where anti-terror laws are currently in place and used to target critical journalists. Under Ethiopia's state of emergency, the imprisonment of journalists has become the norm. Particularly targeted are journalists covering the ethnic conflict in the Oromo region who interview political figures, dissidents, and members of armed groups. Speech advocates reported that in 2022, 40 journalists were imprisoned in Ethiopia, many of them under charges of terrorism.⁶⁶

Turkey, the largest jailer of journalists in Europe, often relies on anti-terror laws. "On a global scale, Turkey still has one of the highest number of journalists in prison. The violation of the right to fair trial continues, as well as the judges' unconstitutional practices which are also in contradiction with international legal standards," said Veysel Ok, co-founder, lawyer, and coordinator of the Turkish legal defense group Media and Law Studies Association. "(Judges) convict anyone who writes news on topics the ruling party does not want. This is confirmation that there is no press freedom in Turkey."

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We were the subject of a financial investigation under the pretext of fighting terrorism and the subject of a lawsuit for statements we made during the trial of a drug dealer who is being defended by a high-ranking government official.

Journalist, Serbia,
Thomson Reuters Foundation Alumnus



REUTERS/Mike Segar

⁶⁵ United Nations, Office of the High Commissioner for Human Rights (December 2021), <https://www.ohchr.org/en/press-releases/2021/12/un-experts-urge-release-rights-defenders-egypt-condemn-misuse-counter>

⁶⁶ African Audiences (2022), 'Journalists and media staffers arrested across Ethiopia in 2021', [Journalists-and-media-staffers-arrested-across-Ethiopia-in-2021.pdf](https://www.africanarguments.org/journalists-and-media-staffers-arrested-across-Ethiopia-in-2021.pdf) ([africanarguments.org](https://www.africanarguments.org))

SPOTLIGHT CASES

Can Dündar is a former editor of the daily newspaper *Cumhuriyet*, in Istanbul, Turkey. On December 30, 2022, Dündar revealed that he had been added to the so-called terrorist “gray list,” a database published by the Turkish Interior Ministry that identifies alleged terrorists and offers rewards for their capture, according to news reports. He was forced into exile and his wife’s passport was confiscated. It took her three years to leave Turkey and reunite with her husband abroad. Dündar continues to receive serious threats (including online threats), and on one occasion a Turkish TV crew showed up at the door of his office, filmed him, and put the address on the internet. He continues with his work under difficult circumstances, facing enormous challenges to manage his security.

Myo San Soe, a freelance journalist from Myanmar, reports for *The Ayeyarwaddy Times*, *BNI News* and *Delta News Agency*. In November 2022, he was sentenced to 15 years in prison on two counterterrorism charges based on accusations of being in contact with members of the People’s Defense Force (PDF), an array of insurgent groups that are fighting Myanmar’s military regime.

In Tajikistan, Zavqibek Saidamini is a former state TV presenter who quit his job in 2019 to protest censorship. He now reports on controversial topics, such as religion and border clashes with Kyrgyzstan, on his YouTube channels. In November 2022, he was convicted of participating in two opposition political organizations, which are banned as extremist in Tajikistan, and sentenced to seven years in prison.

THREAT #7 FINANCIAL CRIMES (TAX EVASION, EXTORTION AND MONEY LAUNDERING)

Authorities have long used tax investigations and audits to punish critical journalists and media outlets and to silence future reporting. However, several prominent cases in recent years have raised alarm. One of them is the [prosecutions of Indian reporter Rana Ayyub](#), who is battling charges of money laundering and tax evasion, false accusations that have been used to stifle her critical investigations⁶⁷. Other journalists have also been falsely charged and convicted for financial crimes, in particular, tax evasion, extortion, fraud and money laundering. Charges are often preceded by burdensome, intrusive and expensive tax probes and audits.

Journalists convicted of financial crimes such as extortion or money laundering have commonly been jailed – often based on little or no evidence – in countries that lack an independent judiciary or basic legal protections. Tax laws can be confusing and overly broad in many countries, and mistakes in filing can be exploited by authorities as the basis for bogus prosecutions. A conviction for financial crimes can result in long-term imprisonment and heavy fines, in addition to compelled restitution, including payment of alleged unpaid taxes, which can bankrupt media and independent

journalists. Media companies have been hit with forced closure and seizure of assets and this risk of prosecution can lead to self-censorship.

Trendline

The adoption of financial and tax laws to exert undue pressure and retaliate against journalists and media has become a pattern, with several flagrant cases in recent years. The Philippines is the starkest example of this trend, as shown by the relentless harassment by the government of journalist and Nobel laureate Maria Ressa and Rappler Holdings Corporation (RHC), involving [seven tax-related investigations launched in 2018](#)⁶⁸. Arresting, charging and convicting journalists of “tax evasion” has become one of [Belarus’s preferred legal tools](#)⁶⁹ to crack down on the media in the aftermath of the 2020 pro-democracy protests. Russia, Vietnam, India, El Salvador, Nicaragua, Guatemala, Tanzania, and Morocco are also on the list of countries that have recently seen several high-profile journalists and critics accused or convicted under fabricated financial crimes as a pretext to silence them.

⁶⁷ Committee to Protect Journalists, Indian Journalist Rana Ayyub on facing death threats and money laundering probe (April 2022) <https://cpj.org/2022/04/indian-journalist-rana-ayyub-on-facing-death-threats-and-a-money-laundering-probe/>

⁶⁸ Committee to Protect Journalists, Hold The Line Coalition welcomes acquittal of Maria Ressa and Rappler, calls for all remaining cases to be closed (January 2023) <https://cpj.org/2023/01/hold-the-line-coalition-welcomes-acquittal-of-maria-ressa-and-rappler-calls-for-all-remaining-cases-to-be-closed/>

⁶⁹ Reporters without Borders, RSF unveils portraits of journalists detained in Belarus (June 2022) <https://rsf.org/en/rsf-unveils-portraits-journalists-detained-belarus>

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The persecution of the free and critical press takes on new and creative nuances each time. It is no longer about crimes of freedom of expression, explicit censorship, but rather elaborate silencing schemes in which financial crimes and other types of cover-ups are used to censor and intimidate critics.

Ana Bejarano,
Pro bono Practice Coordinator, University of Los
Andes (Colombia) and founder of El Veinte



SPOTLIGHT CASES

Juan Lorenzo Holman is the director of the daily newspaper *La Prensa*, in Managua, Nicaragua. In April 2022, a judge sentenced Holman to nine years in prison for money laundering, and also ordered the newspaper's facilities and printing presses to remain closed. On February 9, 2023, Holman was released along with more than 200 political prisoners who were expelled from Nicaragua and illegally stripped of their citizenship. Holman and the others were flown to the US, where they were granted temporary protected status. Since police raided and occupied the publication's offices, *La Prensa* has published only online.

Also in Central America, José Rubén Zamora Marroquín, the president and founder of Guatemalan news organization *elPeriódico*, is a fierce critic of President Alejandro Giammattei. Zamora has been in jail since July 2022, accused of money laundering, blackmail, and influence peddling. Zamora, his family, press freedom groups, and his colleagues have

claimed that the case against him is reprisal for *elPeriódico's* reporting on alleged corruption involving Guatemalan top officials.

In a case from Africa, Tanzanian freelancer Erick Kabendera, a regular contributor to *The East African*, was arrested in July 2019 and later convicted of tax evasion and money laundering. His supporters called the case politically motivated, noting it came after he criticized the government of President John Magufuli. Kabendera was released in February 2020 after paying fines amounting to more than USD\$118,000. While in prison, Kabendera was denied medical attention. He was also prevented from attending the funeral of his mother, who died when he was in jail.



THREAT #8 LESE MAJESTE, DESACATO LAWS AND SEDITION LIBEL

Lese majeste, desacato (contempt, in Spanish), and seditious libel generally punish defaming, insulting or offending public officials and state institutions, often using broad and vague terms and allowing for higher penalties than defamation or insult directed at ordinary citizens. In many cases, such laws specifically punish criticizing the president and other high-ranking officials, foreign leaders, and other branches of power, such as the judiciary. Lese majeste punishes defaming or insulting the monarchy or the reigning sovereign. While such laws may be present in backsliding democracies, they are more likely to be enforced in authoritarian regimes. Seditious libel, another anachronistic offense, usually criminalizes incitement against the state, broadly defined in many countries as to include speech that “brings into hatred or contempt, or excites disaffection,” against the government and/or the monarchy. Seditious libel has been employed to prosecute and imprison journalists in authoritarian regimes or backsliding democracies such as India.

Trendline

Though such laws are generally viewed as archaic, some countries, such as Cambodia (2018) and Morocco (2016) have enacted or reintroduced lese majeste laws that punish insulting the monarchy. Saudi Arabia (2017) criminalized insulting the king as part of the anti-terrorism and national security legislation. Desacato laws are on the books in several Latin American countries, and such laws have been recently enforced in Cuba and El Salvador. In

2022, Russia amended the Criminal Code to penalize criticism of government officials and limit coverage of Russia’s invasion of Ukraine by introducing a provision that sanctions the “discrediting” of the Russian Armed Forces and its operations, with imprisonment of up to five years.

Seditious libel is being used in Hong Kong, Malaysia, India and Thailand to silence the media and crackdown on peaceful dissent. In Turkey, President Recep Tayyip Erdoğan has dramatically increased the use of laws that punish ‘insulting the president’ (Art. 299 of Turkey’s Penal Code), which come with a penalty of up to four years imprisonment. Tunisian authorities have increased prosecutions against journalists for public criticism of President Kais Saied and other officials. In 2021 Selim Jebali, a social media commentator, was sentenced to six months in prison by a military court for “insulting the president,” “defaming the army,” and “accusing public officials of crimes related to their jobs without furnishing proof of guilt.” In April 2022, Amer Ayed, a television host, was sentenced by military court to four months in prison for “insulting the president.” In May 2022, a military court confirmed a six-month prison sentence against journalist Amina Mansour. She was convicted of “insulting the president” for satirical comments posted on Facebook in 2021 that criticized President Saied and his close associates.

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Desacato laws restrict freedom of expression because they bring with them the threat of jail or fines for those who criticize or report on public officials and fear of criminal sanctions necessarily discourages citizens from expressing their opinions on issues of public interest.

Edison Lanza,
Former Special Rapporteur of the Inter-
American Commission on Human Rights



SPOTLIGHT CASES

Zulkiflee Anwar Alhaque, better known as Zunar, is a political cartoonist and regular contributor to *Malaysiakini* in Malaysia. Throughout his career Zunar has faced constant legal threats over his work. The cartoonist has been temporarily detained twice. Several of his cartoon books, compilations of original contents and his work previously published online have been banned or confiscated by authorities. Zunar's Kuala Lumpur-based office and those of the printers who produce his volumes have been raided several times. Most recently, in January 2021, Zunar was charged with sedition following the publication of his cartoon criticizing the decision of Kedah State's Chief Minister Muhammad Sanusito to cancel its *Thaipusam* Hindu religious festival. In 2018, Zunar had nine sedition charges filed against him, then subsequently dropped, for his satirical drawings about the nation's political elite.

Oheneba Boamah Bennie, host and commentator with the radio station Power FM in Ghana, was sentenced in February 2022 to two weeks in prison and given a fine of 3,000 Ghanaian cedis (USD\$468) for contempt of court in response to a video posted on his personal Facebook page in 2020, which alleged that Ghanaian President Nana Akufo-Addo had conspired with judges to influence the presidential elections that year. The journalist asked the judge in his case to eliminate jail time and impose an additional fine because he was in poor health. The magistrate declined.

In India, freelance journalist Siddique Kappan has been imprisoned since October 2020, and authorities in the state of Uttar Pradesh are investigating him under various laws, including sedition. In April 2021, police filed an accusation of sedition and conspiring to incite caste violence against Kappan, the local press said. Police accused Kappan of being an irresponsible journalist who "only reports to incite Muslims" and who sympathizes with Maoists and Communists. In September 2022, India's Supreme Court granted Kappan bail in the Uttar Pradesh police's case, but the journalist remained detained in connection with other charges.

+ POSITIVE DEVELOPMENTS

Desacato laws have been repealed or declared unconstitutional in many countries in Latin America, including Argentina, Bolivia, Costa Rica, Panama and Peru. Lese majeste laws have been repealed or declared unconstitutional in Norway, Belgium and the Netherlands. Many states have repealed, declared unconstitutional or reformed sedition laws to ensure compliance with international human rights law and standards, most recently the Maldives (2018), Sierra Leone (2020), and Singapore (2021). In 2019, the East African Court of Justice ruled that several sections of Tanzania's Media Services Act, No. 120 of 2016, which included a prohibition of dissemination of "seditious content," violate the right to freedom of expression.⁷⁰

In the case of *Vedat Şorli v. Turkey*, the European Court of Human Rights ruled that article 299 of Turkey's Penal Code is incompatible with the European Convention on Human Rights.⁷¹ The court held that Turkey

should bring the relevant domestic law in line with international standards.

In May 2022, India's Supreme Court issued a [historic decision](#) ordering local authorities to temporarily refrain from using the sedition law and keep all pending proceedings on hold. In the [opinion](#) of the court, "Section 124A is not in tune with the current situation and it was intended for the time when the country was under colonial law." The court stressed that it hoped and expected "Centre and State Governments will refrain from registering any First Information Report [FIR], continuing investigation, or taking coercive steps under Section 124A when it is under consideration. It will be appropriate not to use this provision of law till further re-examination is over."⁷²

⁷⁰ East African Court of Justice, *Media Council of Tanzania v. Attorney General*, Judgement of March 28, 2019, <https://globalfreedomofexpression.columbia.edu/cases/media-council-of-tanzania-v-attorney-general/>

⁷¹ European Court of Human Rights, *Vedat Şorli v. Turkey*, Judgment of February 28, 2022, [https://hudoc.echr.coe.int/eng/#{%22itemid%22:\[%22001-212394%22\]}](https://hudoc.echr.coe.int/eng/#{%22itemid%22:[%22001-212394%22]})

⁷² Supreme Court of India, *S.G. Vombatkere v. Union of India*, Order of July 2022, <https://thewire.in/law/full-text-what-the-supreme-court-said-while-putting-the-sedition-law-on-hold>

OTHER LEGAL THREATS

The research identified a number of additional legal threats beyond those that are the focus of this report. They are all significant, with extremely serious repercussions, and are being deployed to stifle critical journalism and free expression.

- **Anti-state propaganda and other anti-state laws:**

These laws criminalize making and distributing information, documents and articles against the state or conducting enemy-sponsored propaganda, and are widely used in Nicaragua, Myanmar, Cuba and Vietnam. While disseminating propaganda is a recognized offense in times of war (or to prevent incitement to genocide or terrorism), broadly defined 'anti-state propaganda' is a troubling offense, often used by states to retaliate against criticism in the media. Several countries sanction expressions solely on the basis of the possible impact on national security, loosely invoked, including expressions that "undermine national security, political and social stability or integrity" or are "dangerous to the political, economic or social system," or "damage[s] the image or 'creditworthiness' of the state".

- **Breach of peace/public order laws:**

Broadly defined, these offenses, including incitement to conduct breach of peace, disorderly conduct, and calls for public mischief, have been abused to restrict media work during mass protests or political instability and public disorder. Hooliganism laws, or laws that punish "grossly violating public order," have also been wielded against journalists covering protests, most commonly in Russia, Belarus, and China.

- **Resisting/obstructing authority/failure to disperse:**

A subset of public order laws, these provisions criminalize resisting or obstructing authority. While they may be legitimate in other contexts, they are highly problematic when used to intimidate and arrest journalists covering protests or mass events. These laws have been applied in a wide range of countries, from Cuba to Belarus. They have also been used in the United States to harass journalists covering the Black Lives Matter protests of 2020.

- **Blasphemy or religion-related offenses:**

These laws are usually used to criminalize speech or actions considered contemptuous of god, or of people or objects considered sacred. Blasphemy laws have long been used to stifle dissent in a limited number of countries, mostly in South Asia, North Africa and the Middle East. Alarming, Mauritania and Uzbekistan are moving to increase penalties or adopt new offenses.

- **Hate speech laws:**

Hate speech laws criminalize speech that targets individuals due to their religious beliefs, national origin, sexual orientation, race or disability. Prohibited speech is defined differently

under different laws and can range from offensive to direct incitement to violence. In some instances, though, these laws have exceedingly vague terms and lack tangible harm and intent requirements, which leave them open to abuse, and can be used to persecute journalists for reporting on matters of public interest relating to these sensitive categories. Examples include Venezuela and Indonesia.

- **Immigration laws and regulations:**

Immigration laws have long been used globally as a pretext to intimidate, arrest and prosecute international journalists and foreign correspondents. In many countries these laws can carry prison sentences. Research shows that there has been an uptick in cases brought against journalists in recent years, with examples documented in Russia, China, and Indonesia.

Experts and journalists cited other threats beyond the above, including: the misuse of laws for the revocation of broadcast licenses in reprisal for critical coverage; efforts to undermine the legal protection of sources; and false criminal charges alleging sexual misconduct and other violent crimes. While not identified as the most serious legal threats, these are all issues that are affecting the work of the press and restricting critical reporting in places like Russia, Venezuela and Morocco.



CONCLUSION

Journalists around the world are facing an extensive array of legal threats that are deployed as a tactic to intimidate and censor unwanted scrutiny and truth-telling. The sanctions are criminal, regulatory, and administrative; taken together, they are thwarting the ability of journalists and the media to operate freely. The legal threats described in this report suggest that many states across the globe are undertaking a concerted effort to criminalize criticism and social unrest, with journalists being a leading target.

Defamation and insult laws are among the most prominent legal threats to journalists globally, in part because of their pervasiveness in all regions and in all types of regimes. Their perceived legitimacy provides the perfect cover for governments seeking to hide their repression behind a democratic facade. Meanwhile, in genuine democracies – particularly in Europe – SLAPPs have become the preferred strategy and a primary legal threat. SLAPPs, which are often pursued by private actors, lack merit, making conviction unlikely. But this is not the point. SLAPPs are intended to bury their targets in legal fees and sap their energy through their endless hearings and filings. SLAPPs can also be part of a “clubbing” strategy, in which officials bombard a journalist or media organization with multiple legal actions targeting a single instance of expression – as occurred with *Gaceta Wyborzca* in Poland – and creating a legal juggernaut that even the best-resourced organizations are hard pressed to withstand. They can also be deployed alongside criminal prosecutions, as was the case with *elPeriódico* and José Rubén Zamora Marroquín in Guatemala.

In the handful of authoritarian countries that imprison journalists in large numbers – places such as Russia, China, Egypt, Belarus, Turkey and Vietnam – “catch-all” national security and public order offenses are often used to achieve their repressive goals. Cybercrimes, meanwhile, provide cover for a range of the invented offenses that reinforce and often overlap with defamation laws already on the books. In some instances – most notably in the case of Rappler in the Philippines – cybercrimes are combined with other offenses, including alleged financial crimes and tax laws violations, demonstrating that authorities are increasingly prosecuting and convicting journalists for non-speech related crimes. These charges not only create legal risk. They damage reputations and compromise the effectiveness of journalists reporting on issues of public interest.

The rule of law is a precious resource that protects free expression, press freedom, and the rights of journalists around the world. But when the law is abused, it becomes a weapon to sublimate and undermine those very same rights, putting journalists at risk and in some cases behind bars. This muffling of journalists has drastic consequences for the media ecosystem, and democracy more broadly. By understanding the global trends emerging, advocacy groups, the legal community, democratic governments, intergovernmental organizations, and journalists themselves, can confront these legal threats through systematic and sustained efforts, as outlined in the next section.

RECOMMENDATIONS: RESPONDING TO INCREASED LEGAL THREATS AGAINST MEDIA FREEDOM



In this final section, we provide key recommendations to combat the growing legal threats against media freedom. The focus is on areas identified by the legal experts and journalists consulted for this report. Many of the recommendations build on existing calls for action and media defense work undertaken by expert groups.

- **Expand research and increase visibility of legal threats:**

This report provides a global overview of the weaponization of the law as a threat to media freedom. Further research and data collection is needed to develop a more forensic understanding of the scope of these legal threats and how they impact journalists and the media ecosystem, as well as to develop responses and strategies that are country-specific and attuned to local realities. Journalists and editors on the frontlines need to be engaged in designing legal solutions that cater to their needs and take gender and diversity considerations into account.

- **Fund legal support and advocacy:**

Funders should significantly increase support for media defense organizations that provide and facilitate access to legal support for journalists, conduct legal research, train judges and legal advocates on media freedom principles, and engage in strategic litigation. Funders involved in media development should proactively assess the risks around how their investment might create legal challenges for the grantee and build in both mitigation strategies and support for legal defense. Funders should also invest in global public

awareness campaigns to educate media organizations about the growing legal risks, and the resources available to fight back.

- **Expand legal protection and defense for journalists:**

International donors, intergovernmental organizations, and democratic governments should ensure that journalists and media organizations facing the threat of legal action have access to legal defense funds and legal representation, in their own countries and before international bodies. This will need to include a scaling up of the legal support currently being offered through media defense organizations and will likely require the establishment of new legal service providers where the legal threats are most acute. This should also cover preventive legal support for journalists to mitigate the risk of legal threats materializing in relation to their content, including expanding access to pre-publication legal review, as well as other forms of preventive legal guidance and education for at-risk journalists and media outlets, such as due diligence guidance relating to data protection policies and foreign funding.

- **Build robust legal capacity and expertise:**

Specialized media lawyers along with other legal professionals with expertise should expand their capacity to combat the increasing array of traditional and non-traditional threats faced by journalists and media outlets. This will need to include responding to newer and often complex legal threats, including prosecutions under cybercrime and financial crime legislation. Training and capacity-building are essential to develop and empower local communities of lawyers to represent journalists and media organizations.

- **Leverage strategic litigation to generate change:**

This report highlighted strategic litigation as a powerful tool to trigger legislative reform and set a positive precedent for how laws should be interpreted in compliance with freedom of speech principles. Civil society advocates, supported by donors and governments, should use strategic litigation to expedite the provision of protection and remedies and improve the legal environment in which the media operates. Amicus briefs and trial monitoring should also be utilized by civil society actors to further highlight freedom of speech principles.

- **Adopt Anti-SLAPPs procedural safeguards:**

States should provide for the necessary safeguards to protect journalists against abusive litigation in civil courts. This may include procedural measures such as instituting early dismissal provisions, capping the cost of legal defense, or imposing compensatory and punitive damages on SLAPP filers. International and regional organizations should support governments seeking to adopt these legal reforms by engaging with relevant officials and legislators, providing technical assistance and facilitating the consultative processes. Donors should also strengthen support to civil society organizations and media groups so that they can continue, and scale up, efforts to track and respond to SLAPPs.

- **Decriminalize defamation:**

The ongoing abuse of these laws against journalists should serve to reinvigorate global efforts to decriminalize defamation, which have floundered. Governments, intergovernmental organizations, and the legal and human rights communities must refocus and re-engage with such initiatives, which can help delegitimize criminal prosecutions for defamation. Civil defamation laws, while not an inherent violation of international law, can also be misused, as this research has shown.

- **Confront the abusers:**

Democratic governments, intergovernmental organizations, and most notably the [Media Freedom Coalition](#), should boldly confront governments that are abusing the law in order to curtail media freedom and censor critical debate. The credibility of democratic governments with the media community rests on their willingness to speak out publicly when violations occur, particularly in the case of authoritarian countries with which they maintain strategic relationships. The defense of media freedom must be an essential principle.

- **Support journalists in exile:**

Legal threats and prosecutions are forcing journalists in some instances to choose exile over jail. The international community should support journalists forced to flee their countries because of legal harassment with emergency visas, resettlement support, and resources where appropriate to continue legal action before national, regional and international bodies.

- **Collaborate and coordinate to maximize impact:**

Siloed action is not sufficient to reverse the increasing weaponization of the law. National and global collaboration and coordination among media defense organizations and legal service providers, between local and international lawyers providing services, and between media law and non-media law specialists, is essential to protect journalists' rights. Coordinated responses, such as the [Legal Network for Journalists at Risk](#), will also be critical in streamlining entry points for journalists to access legal support.

Based on the top legal threats identified in this report, these recommendations offer strategies and actions that come directly from media freedom experts and journalists on the frontlines.

We hope that this report, along with the recommendations, offers a roadmap for media development agencies, funders, and advocates for media freedom, as we work together to support journalism and journalists confronting a wave of legal attacks. The law must strengthen and support independent media in this time of crisis; we cannot allow it to be used as a weapon.

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