



Human Rights Advocates

P.O. Box 5675, Berkeley, CA 94705 USA

Protection of Journalists as Human Rights Defenders

Contact Information:

**Betlehem Gedlu, Frank C. Newman Intern
Representing Human Rights Advocates through
University of San Francisco School of Law's
International Human Rights Clinic**

Tel: 415-422-6961

bzgedlu@usfca.edu

Professor Connie de la Vega

delavega@usfca.edu

I. Introduction

Human Rights Advocates calls attention to areas of concern regarding the protection of journalists. Journalists face major risks as a result of their work because governments and other powerful actors, seeking to escape scrutiny and suppress opposition, often respond to critical reporting or activism with attempts to silence these heroes. Human rights defenders as a whole have been victims of these risks of oppression around the world. At the 34th session, the Human Rights Council (HRC) adopted resolution A/HRC/RES/34/5 addressing the situation of human rights defenders.¹ Threats, surveillance, arbitrary arrest and detention, and, in the gravest cases, enforced disappearance or killings, are too often the cost of reporting the truth.

Although the oppression that exists around the globe is against all human rights defenders, this report focuses on disconcerting trends in several countries where journalists as human rights defenders are targeted. It also offers recommendations to provide a more just and equitable environment for the protection of journalists.

II. Attacks on Journalists

Journalists and other human rights defenders play a critical role in protecting human rights in the world by ensuring the public's right to know so that governments and institutions can be held accountable. Article 19 of the Universal Declaration of Human Rights states that "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."² Similarly, Article 19 of the International Covenant on Civil and Political

1 The Situation of Human Rights Defenders, Human Rights Council Res. 34/5, U.N. Doc. A/HRC/RES/34/5 (Apr. 3, 2017).

2 Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (1948)

Rights also commands that everyone shall have the right to hold opinions without interference.³ Article 19(3) further mandates that this right should not be subject to restrictions unless the restrictions are provided by law and are necessary to respect the rights and reputations of others or to protect national security and ensure public order.⁴

At its 70th session, the General Assembly passed resolution A/RES/70/162 regarding the safety of journalists and the issue of impunity where the resolution in its preamble recognizes how journalism is contributing to the shaping of public debate, in building inclusive and peaceful societies and democracies, and in fostering peace and good governance.⁵ The GA also noted its deep concern about all human rights violations and abuses committed in relation to the safety of journalists including killing, torture, arbitrary arrest and detention, enforced disappearance, expulsion, intimidation, harassment, threats and other forms of violence.⁶

The United Nations (UN) Special Rapporteur on the situation of human rights defenders, Michael Forst, concluded in his January 23, 2017 report that human rights defenders continue to be vilified, threatened, and attacked throughout the world.⁷ In his introduction, he listed journalists, along with community leaders, bloggers and whistle-blowers, as one group of human rights defenders subject to attacks that are multiplying everywhere.⁸ As reported by Article 19, a British human rights organization that focuses on the defense and promotion of freedom of expression and freedom of information, there has been an alarming rise in attacks on journalists who seek to expose

3 International Covenant on Civil and Political Rights, *adopted* Dec. 16, 1966, 999 U.N.T.S. 171; S. Exec. Doc. E, 95-2 (1978).

4 *Id.*

5 General Assembly, The Safety of Journalists and the Issue of Impunity, U.N. Doc. A/RES/70/162 (Feb. 10, 2016).

6 *Id.*

7 Special Rapporteur on the Situation of Human Rights Defenders, Human Rights Defenders, U.N. Doc. A/HRC/34/52, ¶ 80 (Jan. 23, 2017).

8 *Id.*

corruption and abuse.⁹ Article 19 has also reported that in 2016 alone, 259 journalists were imprisoned worldwide, and 79 were killed.¹⁰ This report will now address specific countries as examples.

Eritrea:

Committee to Protect Journalists (CPJ), a non-profit organization that promotes press freedom worldwide, reported Eritrea as the first most censored country in the world in restricting the press, where the only media allowed to disseminate news in the country is the state media.¹¹ Even those working for the heavily censored state press live in constant fear of arrest for any report perceived as critical to the ruling party, or on suspicion that they leaked information outside the country.¹² It is also reported that Eritrea has the most jailed journalists in Africa and none of those arrested are taken to court.¹³ Five independent journalists who were arrested in 2001 may have died in prison, but this couldn't be confirmed because of the limited access to information that exists in Eritrea.¹⁴

One example of the disappearances is the case of Dawit Isaak which is reported by the Tom Lantos Human Rights Commission.¹⁵ Isaak is a writer and journalist with dual Swedish and Eritrean nationality, who has been detained without formal charge in Eritrea in September 2001 and

9 Pam Cowburn, New Article 19 Metric Measures Global Threats to Freedom of Expression and Information, November 29, 2017, <https://www.article19.org/resources/new-article-19-metric-measures-global-threats-freedom-expression-information/>.

10 *Id.*

11 Committee to Protect Journalists (CPJ), Attacks on the Press: 10 Most Censored Countries, 2015 Edition, <https://cpj.org/2015/04/10-most-censored-countries.php>.

12 *Id.*

13 *Id.*

14 *Id.*

15 About the Defending Freedoms Project by the Tom Lantos Human Rights Commission, <https://humanrightscommission.house.gov/defending-freedom-project/prisoners-by-country/Eritrea/Dawit%20Isaak>.

has since gone missing.¹⁶ According to the report, Isaak was detained alongside ten other independent journalists, ostensibly for demanding democratic reforms in a series of letters to President Isayas Afewerki and he was the only Swedish citizen being held as a prisoner of conscience at the time.¹⁷ In April 2002, the Committee to Protect Journalists reported that Isaak had been hospitalized after being tortured but the Eritrean government denied that he had been tortured and refused to allow any visitors.¹⁸ The report also notes that four of Sweden’s biggest newspapers featured Isaak’s case on their front pages and launched a petition for his release a few years after he was released for two days before being re-imprisoned while on his way to hospital.¹⁹ However, the Eritrean president dismissed the issue during a TV interview saying, “We will not have any trial and we will not free him.”²⁰

United States:

Even in the United States, a country listed as one of the “free press” countries by the World Audit,²¹ and where free speech is one of the most cherished liberties, there are reports of journalists’ detention in the last few years. In February 2017, US Press Freedom Tracker reported the arrest of an independent photojournalist, Tracie Williams, who was covering events at the Dakota Access Pipeline camp.²² Even though police had returned her telephone, camera, and other accessories that

16 *Id.*

17 *Id.*

18 *Id.*

19 *Id.*

20 *Id.*

21 Democracy Audit on Press Freedom by World Audit, <http://www.worldaudit.org/presstable.html>.

22 Journalist Tracie Williams arrested at Standing Rock, February 23, 2017, <https://pressfreedomtracker.us/arrest-criminal-charge/?categories=4&tags=3>.

they seized during her arrest, Williams is charged with physical obstruction of government function that could result in a year in jail.²³ She is scheduled to go to trial in June 2018.²⁴

There were also six journalists – Evan Engel, Alexander Rubinstein, Jack Keller, Matthew Hopard, Shay Horse and Aaron Cantú – that were arrested while covering protests against Trump’s inauguration in Washington, D.C. and have been charged with felony rioting as reported by the New York Times.²⁵ According to NY Times, the charges against these journalists have been denounced by organizations like Pen America and CPJ that are dedicated to press freedom.²⁶ Suzanne Nossel, who is the executive director of Pen America, said that the felony charges against these journalists are “bizarre and essentially unheard of when it comes to journalists here in America who were simply doing their job.”²⁷

The New York Times also reported that Carlos Lauria, a spokesman and senior program coordinator for CPJ expressed his concern about the sharp deterioration of press freedom in the U.S. and how the arrests of these journalists could send a “chilling message” to journalists that cover future protests.²⁸ Mr. Lauria also called the charges “completely inappropriate and excessive,” and his organization has asked that they be dropped immediately.²⁹

According to US Press Freedom Tracker, one of the six journalists mentioned above, Aaron Cantú, who is an independent journalist that has written for The Baffler, Truthout, and Al-Jazeera was initially charged with one count of rioting, a felony which carries a penalty of up to 10 years in

²³ *Id.*

²⁴ *Id.*

²⁵ Felony Charges for Journalists Arrested at Inauguration Protests Raise Fears for Press Freedom, January 25, 2017, <https://www.nytimes.com/2017/01/25/business/media/journalists-arrested-trump-inauguration.html>.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

jail.³⁰ However, a grand jury has indicted him on eight separate felony counts and if convicted on all counts, he faces up to 75 years in prison.³¹ The government has refused to drop the charges against Cantu and he is scheduled to go to trial in October 2018.³²

Though the cause, degree and nature of threats that are faced by journalists all over the world varies, the mechanisms that States use to attack these journalists exhibit similar trends. Most countries use laws like anti-terrorism legislation that are repressive but deceptively painted as ensuring public safety to detain and imprison journalists.

III. Anti-Terrorism Laws

The Human Rights Council in its 22/6 resolution has stated its grave concern about national security and counter-terrorism legislation and other measures, such as laws regulating civil society organizations that have been misused by states to target human rights defenders and to hinder their work and endanger their safety in a manner contrary to international law.³³ As per CPJ's annual prison census, more than half of the journalists imprisoned globally are charged with anti-state crimes, including in China, where there is the largest figure of imprisoned journalists in the world.³⁴ According to CPJ, other countries that use similar charges to crush critical voices include Saudi Arabia, which is listed as the third most censored country and where the ruling monarchy, not satisfied with silencing domestic dissent, teamed up with other governments in the Gulf

30 Journalist Aaron Cantú arrested at Trump inauguration, January 20, 2017, <https://pressfreedomtracker.us/all-incidents/journalist-aaron-cant%C3%BA-arrested-trump-inauguration/>.

31 *Id.*

32 *Id.*

33 Protecting Human Rights Defenders, Human Rights Council Res. 22/6, U.N. Doc. A/HRC/RES/22/6 (Apr. 12, 2013).

34 *Supra* note 11.

Cooperation Council to ensure that criticism of leadership in any member state is dealt with severely.³⁵

According to CPJ's report, Ethiopia is also listed as the fourth most censored country for restricting the press.³⁶ Similarly, Human Rights Watch (HRW) has reported Ethiopia as being on the watch for its systematic repression of independent media, especially during election years.³⁷ In its January 2015 report, HRW stated that at least 22 journalists were criminally charged in Ethiopia, and more than 30 fled the country in fear of being arrested under repressive laws.³⁸ The deputy Africa director of HRW, Leslie Lefkow, also said that "Ethiopia's government has systematically assaulted the country's independent voices, treating the media as a threat rather than a valued source of information and analysis."³⁹

According to World Audit, a number of the journalists that have been arrested alongside civil society activists and politicians for years in Ethiopia have been charged with treason, genocide, and attempts to subvert the constitution, all charges that carry prison terms and the possibility of the death penalty.⁴⁰ However, according to a report by CPJ, the government usually doesn't produce sufficient evidence convincingly demonstrating that the work of these journalists was intended to incite violence or encourage ethnic tension or genocide.⁴¹

For example, the Tom Lantos Human Rights Commission reported about a prominent Ethiopian journalist by the name of Enkinder Nega, who was sentenced to 18 years in prison in July

35 *Id.*

36 *Id.*

37 Ethiopia: Media Being Decimated, January 21, 2015, <https://www.hrw.org/news/2015/01/21/ethiopia-media-being-decimated>.

38 *Id.*

39 *Id.*

40 *Supra* note 21.

41 *Supra* note 11.

2012 under the country's overly-broad 2009 Anti-Terrorism Proclamation soon after he published an online column.⁴² The column was critical of the use of terrorism laws by the government to silence dissent and was calling the Ethiopian government to respect freedom of expression and end torture in the country's prisons.⁴³ Nega was awarded the 2012 Freedom to Write Award by PEN for his role as an advocate for freedom of the press and freedom of expression in Ethiopia and continue to receive other similar awards but he still remains in prison.⁴⁴

The UN Working Group on Arbitrary Detention found the deprivation of liberty of Nega to be arbitrary in violation of articles 9, 10, and 19 of the Universal Declaration of Human Rights and articles 9,14, and 19 of the International Covenant on Civil and Political Rights and called for his immediate release in 2012.⁴⁵ Despite the request from the Working Group, the Ethiopian government has not released Nega.

The case of Nega is an example of the typical technique that States use to systematically attack journalists by referencing anti-terrorism laws. The use of these laws for this purpose needs to stop, and states should be obligated to ensure that measures to combat terrorism and preserve national security are in compliance with their obligations under international law and do not arbitrarily hinder the work and safety of journalists.

42 About the Defending Freedoms Project by the Tom Lantos Human Rights Commission, <https://humanrightscommission.house.gov/defending-freedom-project/prisoners-by-country/Ethiopia/Eskinder%20Nega>.

43 *Id.*

44 *Id.*

45 Opinions adopted by the Working Group on Arbitrary Detention at its sixty-fifth session, The Federal Democratic Republic of Ethiopia, Concerning Eskinder Nega, ¶ 45-46, U.N. Doc. A/HRC/WGAD/2012/62 (Nov. 14-23, 2012).

IV. Cooperation of Mandate Holders to Protect Journalists

The Special Rapporteur on the situation of human rights defenders, Michael Forst, in his February 2017 report emphasized the importance of his collaboration with other mandate holders like the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and the Special Rapporteur on the rights to freedom of peaceful assembly and of association in order to protect human rights defenders.⁴⁶ He reported how he sought to work with these mandate holders more closely since restrictions on freedom of expression and peaceful assembly and association are often the earliest signs of attacks intended to criminalize social protest and silence those working on human rights.⁴⁷ The collaboration between these three mandate holders is particularly significant for the protection of journalists who advocate for freedom of the press and freedom of expression in the world since they are often victims of the violation of these intertwined rights.

However, Michael Forst has also acknowledged his difficulty to overcome a “silo mentality” in day-to-day work since each mandate holder has a heavy workload and different priorities for action.⁴⁸ Even though each mandate holder has a clear desire for collaboration, protecting journalists as human rights defenders in a cooperated manner cannot become a reality unless the UN creates the environment for these mandate holders to work effectively and efficiently. The UN should view this collaborated effort as a cross-cutting perspective in order to develop a holistic approach in protecting journalists as human rights defenders and provide the necessary logistics to its various mandate holders.

⁴⁶ *Supra* note 7 at ¶ 29.

⁴⁷ *Id.*

⁴⁸ *Id.* at ¶ 31.

V. Conclusion

Journalists must be afforded greater protection and States should pay attention to the safety of journalists taking into consideration their specific role, exposure, and vulnerability as human rights defenders. As the Special Rapporteur Michael Forst suggested, the UN should also invite and enable its relevant agencies, groups, and mandate holders to work together in order to ensure the safety of journalists throughout the world.

VI. Recommendations

Human Rights Advocates recommends to the Human Rights Council to:

1. Request that the Special Rapporteur on the situation of human rights defenders include journalists in the group of human rights defenders who are at most risk;
2. Effectuate the collaboration between relevant mandate holders suggested by the Special Rapporteur on the situation of human rights defenders so that they can ensure the protection of journalists;
3. Urge state parties:
 - a. To take concrete steps and create a safe and enabling environment for the work of journalists by amending relevant legislation and its implementation that hinder or limit the ability of journalists to exercise their work as human rights defenders;
 - b. To immediately release journalists who have been imprisoned without judicial procedures or who have become victims of enforced disappearances; and
 - c. To create special protection mechanisms and protocols to guide effective investigation and prosecution when journalists and other human right defenders are attacked and provide regular reports about the investigations to the Council.