

- Safety of journalists -

Recommendations by Reporters Without Borders

Various UN bodies have adopted resolutions in the past eight years – including Security Council Resolution 1738 in 2006 and General Assembly Resolution 68/163 in 2013 – with the aim of protecting journalists and combatting impunity for those responsible for violence against journalists. But this progress at the legal level has not been reflected in the reality on the ground, because the number of journalists being killed every year has not fallen. Reporters Without Borders is presenting recommendations for improving the mechanisms that protect journalists and for reminding governments that they have primary responsibility for their safety.

Atrocities against journalists have increased in the past two years, especially in war zones such as Syria, where 11 journalists have been killed since the start of this year alone. Thirteen journalists have been killed in Iraq and eight have been killed in Somalia since the start of 2013. Violence affecting journalists has also increased in countries that are not war zones such as Egypt, Brazil and Pakistan.

Despite the resolutions adopted by the United Nations, the fight against impunity for those responsible for crimes of violence against journalists has seen no significant progress either.

The international community must provide journalists with more effective protection and, to this end, the tools available must be strengthened. As stated in the UN Plan of Action on the Safety of Journalists and the Issue of Impunity, adopted under UNESCO's aegis in 2012: *“There is a pressing need for the various UN agencies, funds and programmes to develop a single, strategic and harmonized approach to the issue of the safety of journalists and the impunity of perpetrators of crimes against them.”*

Various kinds of action must be taken to ensure that the safety of journalists is an international priority and to reinforce governments' obligations in this area.

Monitor and reinforce Resolution 1738

Create the position of special adviser to the UN secretary-general on the safety of journalists

Resolution 1738, which the UN Security Council adopted in 2006, reminds all parties to an armed conflict – both state and non-state actors – of their obligations not only to respect and protect journalists, media professionals and associated personnel but also to prevent violence, combat impunity and protect media installations and equipment.

The Medellin declaration, adopted by UNESCO in May 2007, includes these principles and reaffirms the need to protect journalists in danger zones. More broadly, the Geneva Conventions of 1949 prohibit state and non-state actors from deliberately attacking civilians. This means that other news providers such as bloggers and netizens are also protected.

Finally, Resolution 68/163, which the UN General Assembly adopted in December 2013, says that *“journalists, media professionals and associated personnel engaged in dangerous professional missions in areas of armed conflict shall be considered as civilians and shall be respected and protected as such.”* It condemns violence against journalists, whether in a situation of armed conflict or not, calls on member states to prevent such violence, and asks them to create the security conditions that allow journalists to work in an independent manner without being subjected to pressure.

The issue in this regard is not that there is a legal gap with respect to member states' obligations but rather a lack of means of ensuring compliance.

Resolution 1738 asks states to *“do everything to stop violations of humanitarian law from occurring”* but does not specify a way of monitoring compliance with this request.

At a UN Human Rights Council panel on the safety of journalists in June 2014, Getachew Engida, UNESCO's deputy director, Dunja Mijatovic, the OSCE's representative for media freedom, and Frank La Rue, the UN special rapporteur on freedom of opinion and expression, all agreed that governments had failed to respect their obligations. Effective procedures for monitoring Resolution 1738 are therefore necessary.

What Reporters Without Borders recommends

- Create the position of **special adviser to the UN secretary-general on the protection of journalists**, with the task of monitoring compliance by member states with UN Security Council Resolution 1738. The special adviser's mandate could, for example, be **modelled on that of the special adviser on the prevention of genocide**.

The creation of such a post would have the advantage of establishing a permanent and central structure in the UN system, one capable to referring cases to the Security Council, recommending actions and monitoring states' compliance with their obligations under Resolution 1738.

Giving the special adviser this central position would moreover help to implement the UN Plan of Action on the Safety of Journalists and the Issue of Impunity, which calls on the United Nations to establish "*a network of focal points on issues about the safety of journalists in all relevant UN agencies, funds and programmes*" and to coordinate all UN efforts.

- Appointed and mandated by the secretary-general, the special adviser's responsibilities would include:
 - Gathering all information, especially within the UN system, about violations of the safety of journalists during armed conflicts
 - Acting as a rapid alert mechanism for the secretary-general and, through him, the Security Council, by drawing their attention to any abuses affecting news providers.
 - Drafting recommendations for the Security Council, via the secretary-general.
 - Liaising with the UN system as regards the prevention of attacks against journalists in armed conflicts and trying to improve the UN's capacity to analyse and manage all information about such crimes.

- Undertaking investigations into acts of violence against journalists, media professionals and associated personnel in the event that no investigation has been carried out by the relevant member state.
 - Informing, helping and advising the secretary-general on the drafting of the section on the safety of journalists and related personnel in his reports on the protection of civilians during armed conflicts (in line with Resolution 1738).
- The possibility of individual news providers who have been the victims of violence eventually being able to refer their cases to the special adviser should also be encouraged.

Amend article 8 of the International Criminal Court's statute

Define targeted attacks on journalists as war crimes

To improve the legal protection of journalists in wartime and combat impunity for attacks on journalists, according to the provisions of Security Council Resolution 1738, article 8 of the International Criminal Court's statute must be amended so that deliberate attacks on journalists, media workers and associated personnel are defined as war crimes.

This would help to implement Resolution 1738

Resolution 1738 on the protection of journalists, which the Security Council adopted on 23 December 2006, points out that intentional attacks against journalists, media professionals and associated personnel in situations of armed conflict constitute war crimes. In the preamble, the Security Council voices deep concern about “*the frequency of acts of violence in many parts of the world against journalists, media professionals and associated personnel in armed conflict, in particular, deliberate attacks in violation of international humanitarian law.*” It also emphasizes “*the urgency and importance of this issue*” and says the secretary-general can play a “*valuable role*” in providing more information on this issue.

A way to combat impunity

General Assembly Resolution 68/163 on the safety of journalists and the issue of impunity “*condemns all attacks and violence against journalists and media workers,*” stresses the obligation on authorities to combat impunity for such attacks and calls for 2 November to be celebrated as International Day to End Impunity for Crimes against Journalists.

Protecting journalists because they serve a “general interest”

In a case involving former Washington Post reporter Jonathan Randal, an Appeals Chamber of the International Criminal Tribunal for the Former Yugoslavia recognized that journalists in war zones serve a “*general interest*” because they “*play a vital role in bringing to the attention of the international community the horrors and reality of conflict*” and because “*the information uncovered by war correspondents has on more than one occasion provided important leads for*

the investigators of this Tribunal.” (ICTY, Appeals Chamber, Prosecutor v. Radovslav Brdjanin Momir Talic, § 36).

The ruling added: *“It is because vigorous investigation and reporting by war correspondents enables citizens of the international community to receive vital information from war zones that the Appeals Chamber considers that adequate weight must be given to protecting the ability of war correspondents to carry out their functions.”* (Ibid. § 38).

Reaffirming a fundamental norm of law on armed conflicts

As with humanitarian personnel, the provisions of international humanitarian law specifically establish the immunity of journalists in armed conflicts (article 79 of Protocol I additional to the Geneva Conventions – Measure of protection for journalists) and war correspondents (article 4 of Geneva Convention III – Prisoners of war). Article 79 of Protocol I, stating that journalists in war zones must be regarded as civilians, corresponds to a customary norm applicable in both international and non-international armed conflicts.

In this respect, the conclusions of the Study on Customary International Humanitarian Law, conducted by the International Committee of the Red Cross (ICRC), should be noted: “State practice establishes this rule as a norm of customary international law applicable in both international and non-international armed conflicts.” (Rule 34, p. 154 of the ICRC Study)

Amendment proposed by Reporters Without Borders

Article 8 - War Crimes

2. For the purpose of this Statute, “war crimes” means:

(...)

b) *Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts:*

(...)

xxvii) Intentionally directing attacks against journalists, media professionals and associated personnel, media equipment and media installations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict.

Establish preventive measures

Protect threatened journalists as quickly as possible

States have a key role to play in protecting journalists. They must take measures to facilitate the work of journalists, including measures designed to protect those in imminent danger. Reporters Without Borders has repeatedly seen that a murder or physical attack targeting a journalist could have been avoided if the authorities had responded immediately and appropriately to a request for protection.

In a joint statement on 25 June 2012, four special rapporteurs recommended that, to better protect journalists, crimes against freedom of expression should be recognised as a special category in criminal law and should not be subject to any statute of limitations. Criminal law must effectively deter attacks on journalists.

The European Court of Human Rights has stressed the positive obligation to protect journalists that is incumbent on states. According to the court, the genuine and effective exercise of freedom of expression depends not just on the state's duty not to interfere, but may require positive measures of protection even in the sphere of relations between individuals. States must establish an effective system for protecting journalists, one that must be enshrined in the law at the highest level.

What Reporters Without Borders recommends

- Urge UN member states to modify their criminal legislation and create a specific category of “crimes against journalists.”
- Define the preventive measures that states should take to protect journalists facing an imminent threat:
 - Alert and emergency evacuation mechanisms
 - Protected areas or shelters
 - A police protection programme.
- Take account of the existence of protective measures in the relevant section of the UN secretary-general’s report on the protection of civilians.

Protect non-professional news providers

Take account of new media

UN Security Council Resolution 1738 of 2006 is concerned only with “*journalists, media professionals and associated personnel.*”

The 2012 UN Plan of Action on the Safety of Journalists and the Issue of Impunity goes further inasmuch as it says: “*the protection of journalists should not be limited to those formally recognised as journalists, but should cover others, including community media workers and citizen-journalists and others who may be using new media as a means of reaching their audiences.*”

The role of citizen-journalists is also implicitly enshrined in UN General Assembly Resolution 68/173 of December 2013, which says: “*journalism is continuously evolving to include inputs from media institutions, private individuals and a range of organizations that seek, receive and impart information and ideas of all kinds, online as well as offline, in the exercise of freedom of opinion and expression.*”

However, UN Human Rights Council Resolution 25/38, adopted on 28 March 2014 and addressing the promotion and protection of human rights during peaceful demonstrations, calls on states to pay particular attention only to “*the safety of journalists and media workers covering peaceful protests*” and does not mention non-professional news providers, netizens and citizen-journalists.”

Professional journalists are not the only ones who provide the public with news and information. Governments that do not like the truth often try to impose a news blackout by censoring local professional journalists and blocking visits by foreign reporters. Bloggers and other amateur journalists then often respond by stepping in to denounce human rights violations. Ordinary citizens who take on the role of reporters share all the risks inherent to journalism and expose themselves to the same violence. Although the UN Plan of Action aimed to create “*a free and safe environment for journalists and media workers in both conflict and non-conflict situations,*” a total of 48 netizens and citizen-journalists were killed in 2013 and 11 have been killed since the start of 2014.

What Reporters Without Borders recommends

- Seek adoption by the UN Security Council of a resolution enshrining the obligations of member states to protect all news providers, both professional and non-professional, both online and offline, and in both wartime and peacetime, on the lines of Security Council Resolution 1738, Human Rights Council Resolution 21/12 and Human Rights Council Resolution 25/38 on peaceful protests, which was adopted on 28 March 2014
- This resolution should also stress the role of netizens, the need for protection and the dangers of online surveillance (see RWB’s written submissions in September 2013, A/HRC/24/NGO/31 and June 2014, A/HRC/26/NGO/5).
- Urge member states to take effective measures and create an adequate legislation to protect news providers during demonstrations and protests.
- Introduce the issues of digital safety technology and online safety and surveillance into the debate on journalist and citizen-journalist safety.

Protect news providers who flee abroad

Establish specific protective mechanisms

Many news providers flee abroad every year because they are the targets of threats and harassment and are unable to obtain adequate protection. More than 80 journalists fled into exile in 2013. But even when abroad, these refugees are not always safe. If they wrote by-lined articles and were on radio and TV, their names, voices and faces are known. They remain at the mercy of their persecutors because the country where they find initial refuge is usually near their own.

So far there is no appropriate protection mechanism for professional journalists, citizen-journalists and other human rights defenders in exile, although their situation is often very precarious. Too many western governments just refer to the overall refugee quotas that have been drawn up with UNHCR.

What Reporters Without Borders recommends¹

- Ask the OHCHR to produce a report on the issue of refugee journalists that examines their reasons for fleeing abroad and their situation in the countries where they find initial refuge, and makes recommendations.
- Ensure that refugee journalists have better access to individual protective measures, urban refugee programmes and resettlement, as well as to emergency resettlement and mechanisms of temporary evacuation to safe countries.
- Adopt a resolution enshrining the need for member states to ensure the protection and safety of citizen-journalists and netizens seeking refuge in their country.
 - Countries of “initial refuge” should be urged to:
 - Allow journalists to reside outside refugee camps when they are threatened.
 - Conduct systematic and transparent investigations into attacks on refugee journalists in territory under their jurisdiction,

¹ <http://20juin.rsf.org/recommandations/>

- including attacks in which local authorities are implicated
- Protect journalists seeking refuge from persecution and reprisals by agents of the government of their country of origin.
- Resettlement and asylum countries should be urged to:
 - Increase their national UN resettlement quotas and ensure that priority is given to journalists who have had to flee abroad in connection with their work.
 - Make it easier for refugee journalists to enter the asylum country's consulates and submit applications for humanitarian visas.
 - Allow refugee journalists to file asylum applications in embassies in transit countries and ensure that they are able to travel quickly to the asylum country if the application is approved.
- Call for the creation of a specific alert mechanism within each UNHCR field office to ensure that refugee journalists have better access to individual protective measures, urban refugee programmes and resettlement, as well as to emergency resettlement and mechanisms of temporary evacuation to safe countries.

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