

BALANCING CIVIL RIGHTS AND NATIONAL SECURITY

IMPACT OF ANTI-TERROR LAWS ON MEDIA
AND CIVIL LIBERTIES IN EUROPE AND ASIA

Edited by

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PREFACE

Ten years after the unprecedented terrorist attacks on the USA on 11 September, the world is still counting the different costs associated with the “war on terror” launched by the Americans in the immediate aftermath of the attacks. 9/11, as it is now popularly called, was to set off a whole chain of events with wide repercussions around the world and for many of us from Denmark and Germany to India and Pakistan.

As the world commemorated the 10th anniversary of the 9/11 attacks in different ways, the Asian Media Information and Communication Centre (AMIC) and the European Union Centre (EUC) in Singapore decided to commission two researchers to examine the impact of anti-terror laws on the media and civil liberties in Europe and Asia. This book “Balancing Civil Rights and National Security: Impact of anti-terror laws on media and civil liberties in Europe and Asia” is a result of the research by Ramesh Jaura and Syed Javed Nazir.

The attacks of 9/11 had had far reaching consequences on the framing of debates on security and terrorism. The United States in framing its response as a “war against terror”, launched a war on Afghanistan to “flush out” the Al-Qaeda operatives led by Osama bin Laden and adopted a series of tough anti-terrorism measures. One of the most far-reaching legal provisions is the so-called USA PATRIOT Act that grants the government the authority to re-define terrorism, conduct secret surveillance to gather intelligence and allowing the detaining of immigrants for lengthy periods without trial. A Department for Homeland Security was also created to coordinate domestic anti-terrorism efforts.

Outside of America, many other countries also rushed to adopt and strengthen various counter-terrorism laws that at times are loaded towards the security concerns at the expense of the protection of human rights. As more and more legislations were enacted that progressively granted the governments “more rights” in the name of security, human rights groups began to voice concerns over the potential for trampling on civil rights and liberties. This has brought into the forefront the age-old debate on the trade off between security and freedom, national security versus civil liberties.

The impact of the rush to adopt anti-terror laws on civil liberties and media freedom has been a concern both in Europe and Asia. The chapter on Asia written by Javed Nazir chronicles some of the threats faced by journalists in a number of Asian countries. Several Asian governments have used the threat of terrorism as an excuse to crack down on political dissent and cover up their abuses of human rights, undermining the development and consolidation of democracy in several of the countries surveyed. Mary Robinson, former UN High Commissioner for Human Rights, said during a conference in Brussels on “10 years after 9/11 – Journalism in the Shadow of Terror Laws” that “the language of war on terror has made easier for governments to introduce measures which repress media freedom and fundamental rights”. She added that the anti-terror legislation after 9/11 “has undermined journalistic integrity and discouraged critical voices”.

The chapter on Europe written by Ramesh Juara explores how anti-terror laws and the whole securitisation of terrorism and of debates over migration have compromised civil liberties, particularly those of the Muslim community. This in turn contributed to the environment of skewed media debates and rise of the far right and public support for anti-terror laws.

We hope this book will lead us to reflect on the state of our democracy, the role of media in our society and how they might have been better balanced in our quest for security.

Dr Yeo Lay Hwee
Director, EU Centre

2011

ABOUT THE AUTHORS

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Syed Javed Nazir is a veteran of more than 30 years in journalism and media education on four continents. He has been writing and lecturing on media, religion and ethnic conflicts in recent years. Prior to teaching at the Lahore University of Management Sciences (LUMS), he served as senior fellow at the Wee Kim Wee School of Information and Communication, NTU, Singapore. Before that he taught media and ethno-religious conflicts at the University of Michigan, Ann Arbor. Among other significant responsibilities at the LUMS included the two-year appointment as the Howard R. Marsh Professor of Journalism. Javed's work has been published in a number of mainstream and academic publications from the New York Times to Detroit News to publications in Southeast Asia. His recent work "The South Asian Islam" was published last month by Washington State University and Poynter Institute simultaneously for the education of American journalists intending to cover religion and politics in South Asia.

INTRODUCTION

Dr Kalinga Seneviratne, AMIC, Singapore (Project Coordinator)

“There has been a rush to adopt anti-terror laws in the aftermath of 9/11, and this has undermined respect for human rights and the rule of law. One worrying aspect of these laws has been the general extension of surveillance powers over citizens and their personal communications. We are particularly concerned about the shift of power to police and security agencies to monitor and intrude upon the professional activities of journalists and media, which seriously impede their ability to report on matters of public interest.”

This was a statement issued by 40 representatives from the media, legal and civil rights organizations that met in a Forum on anti-terrorism legislation and its impact on freedom of expression and information, in preparation for the 1st Council of Europe Conference of Ministers responsible for Media and New Communications Services that took place in Reykjavik, Iceland in May 2009. They reiterated that these laws have resulted in censorship and self-censorship, to the detriment of society’s right to be informed.

Media practitioners and their organizations outside Europe in countries such as the United States, Australia, New Zealand and in Asian countries such as India, the Philippines, Indonesia, Thailand and Sri Lanka have expressed similar sentiments.

In February 2009, hundreds of press photographers taking photographs converged on Scotland Yard in a mass picture-taking event organised by the National Union of Journalists in protest against section 76 of the Counter-Terrorism Act 2008, which if it became law would make it a criminal offence to take a picture of a police officer.

In Sri Lanka, the Prevention of Terrorism Act grants security forces sweeping powers to raid any home, and to demolish properties considered a threat to national security. During the civil war (which ended in May 2009), Human Rights Watch accused the government of misusing the anti-terrorism laws to stifle media that have criticized authorities’ handling of the conflict with the Tamil Tiger rebels. And in the Philippines, in July 2007, Justice Secretary Raul Gonzalez stated that under the Human Security Act he might recommend wiretapping journalists if the government believes that they are “co-mingling” with terror suspects. In interviews with reporters, Gonzalez made much of the supposed safeguards in the anti-terror law and the principle that media’s sources of information are “sacred.” Yet, in the same breath, he added: “Of course, unless there is sufficient basis or if they are being suspected of co-mingling with terror suspects.” It was not clear whether this co-mingling would include journalists interviewing supposed terror suspects for their stories.

Thus, be it the liberal democracies of the West or those in the East, anti-terror laws introduced since 9/11, or tightened in that atmosphere, seem to have impacted negatively on hard-won media freedoms in many countries. With the 10th anniversary of the 9/11 bombings in New York coming up in September 2011, the Asian Media Information and Communication Centre (AMIC) thought that it is an opportune time to look at this issue, especially as a comparative study of the situation in Europe and Asia.

We are thankful to the EU Centre in Singapore for supporting this project and the two writers Ramesh Jaura in Bonn and Javed Nazir in Lahore for taking on the

painstaking task of analysing the new anti-terror laws enacted in the selected countries and its impact on civil liberties and the media, especially on reporting political and social issues.

As Ramesh Jaura points in his conclusions to the European report, “Member States across the EU find themselves faced with a dilemma: to preserve cherished democratic values of which Europe is proud, or to combat “terrorism”, which is perceived as a threat to those values. Whenever an occasion arises, they assure us that they are aware of the delicate balance between civil liberties and national security”. The report examines critically how governments in the UK, France, Germany, Netherlands and Denmark are grappling with this dilemma.

Javed Nazir examines the situation in 5 Asian countries, namely Pakistan, India, Indonesia, Philippines and Sri Lanka, countries which have suffered from terrorist attacks in the past decade. He says in his conclusions that “transitioning nations such as Indonesia, the Philippines and Pakistan cannot afford to allow their governments free rein to what the CPJ (Committee to Protect Journalists) calls a culture of chaos and violence against the media. What has been lacking clearly in developed and developing nations alike is the debate around terrorism laws, where media in fact is the key player. There is a need for a paradigmatic change. Civil liberties for a whole population cannot be stifled to pave the road for chasing down the terrorists”.

It is important that these issues are discussed and debated in open academic and policy-making forums in both Asia and Europe. The two reports clearly reflect that there are commonalities in the way certain governments and law enforcement authorities have been using the anti-terror laws to stifle free reporting. There is a need for middle ground and this cannot be achieved without proper and widespread discussions among and between stakeholders.

Thus this book is designed as a document for discussion and a resource material for tertiary studies on international affairs and cross-cultural issues on human rights, and freedom of the media.

CIVIL LIBERTIES AND NATIONAL SECURITY IN EUROPE

A DELICATE BALANCE

RAMESH JAURA

INTRODUCTION

“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 regardless of frontiers”, states Article 19 of the Universal Declaration of Human Rights.

The Washington-based Freedom House refers to Article 19 in its report titled *Freedom of the Press 2011: A Global Survey of Media Independence* and asserts: “All states, from the most democratic to the most authoritarian, are committed to this doctrine through the UN system”.

The survey, released on May 2, 2011 as part of the UNESCO World Press Freedom Day celebration in Washington, D.C., found that “only 15 per cent of the global population – one in six people – live in countries where coverage of political news is robust, the safety of journalists is guaranteed, state intrusion in media affairs is minimal, and the press is not subject to onerous legal or economic pressures”.¹

Those “one in six people” live in Western Europe – a reason, why “Western Europe has consistently boasted the highest level of press freedom worldwide”, says Freedom House. The survey mentions that 23 countries in the European region were rated “free” in 2010, and only two countries were labelled “partly free”.

In terms of population, 72 per cent of Europeans enjoy a “free press” while 28 per cent live in “partly free” media environments. However, the survey noted that “in a change from recent years, the regional average score showed the second-largest decline of any region, with losses in the political category and to a lesser extent in the economic category”.²

The political category encompasses a variety of issues, including editorial pressure by the government or other actors, censorship and self-censorship, the ability of reporters to cover the news, and the extra-legal intimidation of and violence against journalists, explains Karin Deutsch Karlekar in an overview essay titled *Press Freedom in 2010: Signs of Change amid Repression*. He adds that under the economic category, the *Freedom of the Press* index examines issues such as the structure, transparency, and concentration of media ownership; costs of production and distribution; and the impact of advertising, subsidies, and bribery on content.

The region’s largest numerical change in 2010 was the decline in Turkey’s score, which fell from 51 to 54 as a result of heightened harassment of journalists under a number of laws, including Articles 301 and 216 of the penal code and antiterrorism legislation. This legal pressure led to increased self-censorship by journalists, editors, and media owners, writes Karlekar, a senior researcher at Freedom House.

In Denmark an attack on political cartoonist Kurt Westergaard and other intimidation stemming from the 2005 controversy over cartoons of the prophet Muhammad left its footprints by way of dropping the country’s score from 11 to 13. Countries scoring 0 to 30 are regarded as having “Free” media.

Countries in the 30–60 score range are considered as having “Partly Free” media. Italy is

¹ Freedom House, *Press Freedom in 2010: Signs of Change Amid Repression* (Freedom of the Press 2011 Overview Essay by Karin Deutsch Karlekar) p.1.

² *Ibid.*, p.11.

one such country because of growing government attempts to interfere with editorial policy at state-run broadcast outlets, particularly regarding coverage of scandals surrounding Prime Minister Silvio Berlusconi. Freedom House therefore identified Italy as “a regional outlier”.

While refraining to go that far, the Freedom House therefore expressed concern about the United Kingdom’s extensive libel laws, which have been used by both foreign and British litigants to stifle criticism from news outlets, book authors, and civil society groups within the country and abroad, often at great financial cost to the defendant.

However, the report expressed the hope that some initial moves toward reform would bear fruit in 2011, following sustained pressure from press freedom and media industry advocacy groups.

9/11 and the Shift to a New Security Paradigm

Whether or not such expectations materialise, the fact is that the security paradigm has undergone a profound change since 9/11, an acronym for a series of coordinated suicide attacks by al-Qaeda on the United States on September 11, 2001, by intentionally crashing two hijacked airliners into World Trade Centre in New York City. A third plane was smashed into the Pentagon. The fourth, hijacked toward Washington, D.C. crashed in a field near Shanksville in rural Pennsylvania, after passengers attempted to retake control of the airliner. There were no survivors from any of the flights.

The attacks triggered a wave of condemnation by mass media and governments as well as avowals of sympathy and support for the U.S. across the globe, manifested in the Security Council Resolution 1368, which expressed willingness to take all necessary steps to respond and to combat all forms of terrorism in accordance with the UN Charter. Soon, numerous countries introduced anti-terrorism legislation and froze bank accounts suspected of being associated with al-Qaeda. Law enforcement and intelligence agencies in several countries arrested a number of suspected terrorists.

Approximately one month after the attacks, a broad coalition of international forces lined up behind President George Bush to remove the Taliban regime in Afghanistan, which was suspected of harbouring al-Qaeda. The U.S. went a step further and set up the controversial detention centre at Guantánamo Bay to hold inmates the Bush Administration defined as “illegal enemy combatants”.

Bush’s “war on terrorism” soon started targeting Arab-looking young men and women, and civil liberties and freedom of press were sacrificed at the altar of a new security paradigm. Slowly, criticism mounted. Though those voices have yet to usher in a security paradigm based on Article 19 of the Universal Declaration of Human Rights, some soul-searching appears to have begun – spurred by unrelenting efforts of Muslim minorities and enlightened parliamentarians in countries that host sizeable numbers of Islamic faith communities.

As Demos, a leading British think tank points out, “The dynamics of al-Qaeda and inspired groups make it especially challenging; authorities must move seamlessly from the global to the local, must fill large gaps in their knowledge about Islam and the Islamic world, and maintain a delicate balance between operational interventions and long-term relationship-building”.

“The task is difficult”, adds Demos, “because al-Qaeda’s growth coincides with a wider but very diverse movement of Muslim mobilisation in Europe, some highly radical (some violent, some non-violent), and anxiety has been heightened by unease about the growing visibility of Islam in Europe.”

Views differ on whether radical mobilisation will lead to Muslim integration in European societies or endanger the stability of Europe. But there is wide agreement that factors such as the socio-economic status, perceived or real crisis of identity, international travel and communication facilities, integration incentives, immigration and foreign policies as well as media portrayal of Muslims are of crucial significance.

The think tank thus considers it critical that counter-terrorism strategies address these broader concerns and the specific challenges posed by the terrorists, but regrets that “despite

European experience of terrorism, there is insufficient understanding of how different factions and types of mobilisations relate to one another”.³

Demos’ analysis is underlined by situation reports in the United Kingdom, Germany, France, the Netherlands and Denmark.

SITUATION REPORT: UNITED KINGDOM

Muslim population

According to the British Religion in Numbers (BRIN), an online religious data resource, UK Muslim population in 2010 amounted to 2,869,000, which is equivalent to 4.6% of the population. In absolute terms, the UK has the third largest Muslim community on the continent, after Germany (4,119,000) and France (3,574,000). In percentage terms, the UK is in ninth position, after Belgium (6.0%), France, Austria and Switzerland (5.7%), The Netherlands (5.5%), Germany (5.0%), Sweden (4.9%) and Greece (4.7%). UK Muslims account for 16.8% of all Muslims in Western Europe.

Impact of anti-terror laws

The Federation of Student Islamic Societies (FOSIS) is convinced that Black and Asian people are unfairly targeted by anti-terror law in the United Kingdom. “Ethnic minority people are disproportionately stopped and held under an anti-terror law used in UK ports and airports. Schedule 7 of the Terrorism Act 2000 allows police to stop, question and detain people for up to nine hours without reason to suspect them of a crime”, FOSIS spokesman Qasim Rafiq stated in a press release on May 23, 2011.

More than 85,000 stop and searches had been carried out under Schedule 7 in 2009 and 2010, according to statistics released following a freedom of information request made by FOSIS. Of these stops, 2,201 lasted more than an hour and fewer than one in a hundred (0.57 per cent) of them resulted in a detention. No information had been provided on the results of any detentions, the statement recorded.

“The data speaks for itself; Schedule 7 remains the most draconian stop and search power in existence with little accountability and transparency”, Rafiq explained. “The officer-defined data provides an insight into the mindset of port officers when stopping people and sends out a dangerous message: if you’re from an ethnic minority background, ports are not welcoming places for you”, he added.⁴

Such messages evidently contravene the UK’s international commitments and proclamations. It is after all, party to the Framework Convention on National Minorities, and proclaims an integration policy based on valuing and promoting cultural diversity.

Explaining the disconnect, Euro-Islam.info says:

As Muslims navigate integration into British society, so they challenge the wider society to change and adapt to ensure that society is inclusive of their distinct cultures and values. Muslims generally enjoy the right to practice their religion. However, certain obstacles arise from the many social practices that are structured around basic Christian assumptions, which accommodate the needs of Christians but not of other minority faith communities.

Against this backdrop, the United Nations Human Rights Committee urged London to ensure that all persons are protected from discrimination on account of their religious belief.

³ Jamie Bartlett & Jonathan Birdwell, *The Edge of Violence. A Radical Approach to Extremism* (report by Demos, 2010). < <http://www.demos.co.uk/projects/fromthreattoopportunity>>.

⁴ Federation of Student Islamic Societies, *Black and Asian people unfairly targeted by anti-terror law* (Press release, 23 May 2011). Web < <http://media.fosis.org.uk/press-releases/1388-black-and-asian-people-unfairly-targeted-by-anti-terror-law>>.

Euro-Islam.info, an active network of researchers and scholars conducting comparative research on Islam and Muslims in the West, noted that with the decline of the threat from Northern Ireland and the “increase from Islamic terrorism”, the government’s priorities have shifted, especially as the UK published a new Anti-Terrorism, Crime and Security Bill on November 13, 2001.

This bill was largely aimed at addressing the problems of terrorism from international sources, and thus differentiated between terrorism associated with Northern Ireland, and terrorism associated with Islamic radicalism. For instance, the law allowed the indefinite detention of foreign nationals considered not safe to deport to their country of origin.

Certification of such status is left entirely with the Home Secretary but it can be appealed to a special immigration commission. Since the passage of the act, at least 500 individuals have been detained, although the vast majority have ultimately been released.

Further provisions allowed the freezing and confiscation of funds associated with terrorism or proscribed groups, limited the disclosure requirements for anti-terrorism investigations and placed the discretion with the prosecuting authorities.

Individuals are required not only to refrain from association with suspected terrorists and proscribed organizations, but also are required to report any suspicions to the law, with criminal penalties for those who do not comply. Legal authorities may detain and interrogate individuals in anticipation of violence rather than in response to the action. The state is now allowed to compel communications companies to retain information regarding the actions of suspects.

In 2006, more controversial legislation was introduced by the government. The original draft of the Terrorism Act (2006) would have allowed those suspected of terrorist involvement to have been detained for up to 90 days without trial. This was a particularly controversial element of the proposed legislation, and although it was supported by the police and by Tony Blair’s government, it was widely criticized by MPs on the grounds that it undermined the United Kingdom’s historic commitment to civil liberties.

Although the Act was passed, this part of the bill was famously rejected by the House of Commons on November 9, 2005. Tony Blair had told Parliament earlier that day that “sometimes it is better to lose and do the right thing than to win and do the wrong thing”. It was Blair’s first defeat in the House of Commons since becoming Prime Minister. The government did, however, manage to extend existing legislation, meaning that terrorist suspects could, with the passing of the 2006 Terrorism Act, be held for a maximum of 28 days without trial.

A study by the Institute of Race Relations suggests that some of the new anti-terrorism laws have been used overwhelmingly against Muslim defendants. Of the hundreds of arrests, only a handful has led to convictions. “There has also been a tendency to extend the anti-terrorism laws to cover routine criminal acts and immigration violations committed by Muslims. Of the cases reviewed, one in eight was a Muslim arrested for terrorism violations and turned over to the immigration authorities without any prosecution for the alleged initial offences”.⁵

An offshoot of the UK’s post 9/11 security paradigm is that in March 2006, the government introduced the Immigration, Asylum, and Nationality Act 2006, which excludes a right of appeal against refusal of entry clearance as a student. The Act also increases the powers of immigration officers, customs and police to obtain information, including fingerprints and other biometric information, and to search arriving passengers. The police now have the power to require advance information about passengers and crew or freight of ships and aircraft arriving, expected to arrive, leaving or expected to leave the United Kingdom.

Further, the Act allows the Home Secretary to deprive an individual of British citizenship or of the right to live in the UK if he or she is satisfied that deprivation of citizenship or right of abode is

⁵ Arun Kundnani, 'Stop and Search: Police Step up Targeting of Blacks and Asians', *IRR News*, 26 March 2003. Web <<http://www.irr.org.uk/2003/march/ak000015.html>>.

conducive to the public good.⁶

Media coverage

The role of the UK media on the whole in this situation has not been something it has reason to be proud of. In *(Mis)Representing Islam: The Racism and the Rhetoric of British Broadsheet Newspapers*, John E. Richardson argues that “the reporting of the broadsheet press is dominated by racist assumptions and outputs”. In his systematic research over a period of several months, in which he paid detailed attention to dominant reporting patterns, Richardson found that “the Muslim-ness of certain countries [was] persistently back grounded or absent from reporting” (as was the case with Indonesia, for example, the country with the largest Muslim population in the world) whereas “the Muslim-ness of certain other countries was persistently fore grounded”. He also contends, that “the more ‘ordinary’ political decisions of Muslim nations are...not understood in relation to their Islamic-ness.”

Richardson found that many portrayals of British Muslims “are based on a ‘White fantasy’ regarding the rights and abilities of ‘White’ society to regulate the parameters of British society – to include or exclude”.⁷

Elizabeth Poole argues in another study that “A crisis of national identity and a defensive construction of a common national culture to provide stability and certainty... excludes Muslims from Britishness”.⁸ She is of the view that “press coverage of British Islam represents a project intent on ‘cultural closure’” and that such ‘patterns of representation... legitimise current social relations of dominance, power structures and therefore continuing patterns of discrimination’.

SITUATION REPORT: GERMANY

Muslim population

Germany has the largest Muslim population in Western Europe after France. Whereas Islam is the largest minority religion in the country, the Protestant and Roman Catholic confessions are the majority religions. As of 2009, there were 4.3 million Muslims (5.4 per cent of the population). Of these, 1.9 million were German citizens (2.4 per cent). 100,000 of them were reported to be German converts to Islam.

The large majority of Muslims in Germany are of Turkish origin (63.2 per cent), followed by smaller groups from Pakistan, countries of the former Yugoslavia, Arab countries, Iran and Afghanistan. Most Muslims live in Berlin and the larger cities of former West Germany.

However, unlike in most other European countries, sizeable Muslim communities exist in some rural regions of Germany, especially Baden-Württemberg, Hesse and parts of Bavaria and North Rhine-Westphalia. Owing to the lack of labour immigration before 1989, there are only very few Muslims in the former East Germany. The majority of Muslims in Germany are Sunnis, at 75 per cent.

There are some members of the Shia community (7 per cent) and are mostly from Iran and some members of the Ahmadiyya Muslim community (1 per cent), most of who are of Pakistani origin. Most Turkish Muslims are Sunnis, but between a fifth and a quarter are believed to be Alevis. The Alevis are a heterodox Muslim sect with few if any outward religious characteristics, who account for between a fifth and a quarter of the population in their native Turkey. The Ahmadiyya comprise a minority of Germany’s Muslims, numbering some 60,000 members in more than 200 communities as of 2004.⁹

Impact of anti-terror laws

⁶ Euro-Islam.info, *Islam in the United Kingdom*. Web <<http://www.euro-islam.info/country-profiles/united-kingdom/>>.

⁷ Richardson, John E. *(Mis)Representing Islam: The Racism and the Rhetoric of British Broadsheet Newspapers*. Amsterdam: Johan Benjamins (2004).

⁸ Elizabeth Poole, *Reporting Islam: Media Representations of British Muslims*. London: IB Tauris (2002). p.99.

⁹ ‘Studie: Deutlich mehr Muslime in Deutschland’, *Deutsche Welle* (Web), 23 June 2009. <<http://www.dw.de/dw/article/0,,4419533,00.html>>

In the months after 9/11, Germany hammered out new policies relating to civil liberties, immigrant rights, the freedom of churches, and law enforcement powers. These new policies were passed in two large packages, the first coming only a week later on September 19, 2001, and the second on January 1, 2002, investing the police with substantially more power to demand and search records from various sources. Financial records, electronic and postal communications, and most forms of transportation records became available to the police. Along with this, the police were allowed to use a previously extremely controversial search method called the "grid-search".

The new laws also allow a certain amount of eavesdropping and wiretapping in the course of an investigation. Police are now allowed to track the location and numbers of cellular phones. Military intelligence has received substantially more domestic powers, with easier searches, access to communication records, and the legal ability to communicate its findings to other law enforcement agencies. Given its ostensibly non-domestic purpose, military intelligence is not subject to the same privacy laws regarding personal data and searches.

On June 29, 2011 the German government agreed after a month-long debate on the extension of anti-terror laws for the coming four years, with the Interior Minister, Hans-Peter Friedrich asserting that these would be around "as long as they are necessary".

Two months earlier, Germany announced that three suspected al-Qaeda terrorists who had been arrested posed a "concrete and imminent" threat. He said in a statement that the arrests triggered by information from "domestic intelligence services and foreign partner organizations" succeeded in averting a serious danger. The suspects had been under surveillance since April 15, he said, adding that the case showed that Germany remained a target of international terrorists.

The Wall Street Journal Europe reported on May 2, 2011¹⁰ that

"The three men in custody were in the final planning stages of an attack and preparing a dry run, according to prosecutors. The three are accused of trying to construct a home-made bomb from readily available chemicals that prosecutors say they had planned to detonate in a crowded area. The trio face charges of supporting an international terrorist organization and are being held without bail.

The alleged conspiracy underscores how serious the threat of Islamic terrorism in Germany remains", authorities said. Officials have been warning of a potential attack on German soil for months, citing what they described as credible intelligence that terrorists were considering an assault on a major landmark such as the Reichstag, the federal parliament building in Berlin. It is unclear if the alleged conspiracy is directly linked to the previous terrorism warnings, however.

The newspaper added, "Germany's military engagement in Afghanistan and support for US-led anti-terrorism initiatives have made the country a target."

Asylum/immigration laws

Since 9/11, Germany has also substantially tightened its asylum granting procedures and established the legal principle that foreigners considered a threat to German democracy and security can be barred entry and deported. A new law on immigration took effect on January 1, 2005 which intends both to increase the immigration of skilled workers to support the German economy and to regulate the influx of asylum seekers and other immigrants considered less desirable. The law will allow for easier deportation of individuals in the country for long periods and restrict the granting of residence permits to others.

Independent research indicated that in everyday life, relations between the police and "visual Muslims" are increasingly characterised by a suspicion and scepticism. In fact, no

¹⁰ David Crawford, 'German Authorities Intensify Search for Terrorist Suspects', *Wall Street Journal Europe*, 2 May 2011.

official figures concerning Muslims and criminality or policing exist – because the German criminal statistics do not provide details on religious background. The Federal Commissioner on Integration has, however, mentioned that foreigners with residency permission do not show any particularities regarding criminality. The Commissioner emphasized that a successful integration policy also means crime prevention.

Media coverage

An analysis of media responses in Germany by Euro-Islam.info finds that since the Iranian Revolution and 9/11, media interest in Islam has been increasing dramatically. It is one of the most popular topics in German media. “In general, Muslims are portrayed as a threat, and Islam is associated with crime, terrorism, the oppression of women, honour killings, backwardness, and intolerance. Terms like ‘Islamic terror’, ‘Muslim extremist’, or ‘cancer/ulcer of Islamism’ regularly appear in German newspapers. Thus, Muslims often symbolize the ‘other’ and are perceived with suspicions and fears in predominantly one-sided media coverage,” Euro-Islam.info says.¹¹

The analysis finds that Muslims are generally viewed as being a homogeneous group and the diversity of the faith communities is completely ignored. By far, most German media coverage concerning Islam deals with the issues of fundamentalism and terrorism. An example of the biased view is provided by reports about police raids on mosques. Although raids on mosques make headlines, more than 99 per cent of all mosque raids turn up no significant results, Euro-Islam.info says. “This fact, however, is often reported towards the end of articles or inside in newspapers. Reports about mosque raids have changed the perception of mosques in the public”.

Furthermore, media coverage about Islam in Germany is dominated by issues such as controversies about mosque constructions, forced marriages, honour killings and the ban of the veil. Public discussion around the law concerning banning the veil at public schools might have had a worse effect than the law itself, since Muslim women were either generally portrayed as oppressed and dependent or, in the other extreme, as being fundamentalists, notes the analysis.

SITUATION REPORT: FRANCE

Muslim population

Islam is the second most widely practiced religion in France by number of worshippers, with an estimated total of 5 per cent to 10 per cent of the national population. Muslims comprised an estimated two-thirds (68.5 per cent) of all new immigrants to France in 2010. At least 2 million Muslims have French citizenship.

Muslim immigration, mostly male, was high in the late 1960s and 1970s. The immigrants came primarily from Algeria and other North African colonies; however, Islam has an older history in France, since the Great Mosque of Paris was built in 1922 as a sign of recognition from the French Republic to the fallen Muslim *tirailleurs* (sharpshooters) mainly coming from Algeria, in particular at the battle of Verdun and the take-over of the Douaumont fort.

Muslims are settled throughout the country, but there are concentrated communities in the Île-de-France (35 per cent), Provence-Alpes-Côte d’Azur (20 per cent), Rhône-Alpes (15 per cent), and the Nord-Pas-de-Calais (10 per cent).¹²

Anti-terror laws and immigration policies

In France, the legal code bans incitement to racial discrimination, racial hatred and violence against members of other races. The legislative response to 9/11 came first in the Law on

¹¹ Euro-Islam.info, *Islam in Germany* (Author David Motadel). Web <<http://www.euro-islam.info/country-profiles/germany>>.

¹² The Pew Forum on Religion & Public Life, *The Future of the Global Muslim Population: Projections for 2010–2030*. 27 January 2011. Web <<http://www.pewforum.org/The-Future-of-the-Global-Muslim-Population.aspx>>.

Everyday Security passed on November 15, 2001. But, as Elizabeth Sebian writes:

It has been particularly controversial, as it clearly extends far beyond the boundaries of what normally could be considered counter-terrorism. Along with relatively minor juvenile delinquency measures, police powers were substantially expanded. Stop and search of vehicles in the context of terrorism investigations became legal without prior court approval.¹³

This policy clearly has the potential for abuse. It became legal to search unoccupied premises at night with a warrant but without notification of the owner. Private police records were also made available to terrorism investigators. Probably most controversial, however, has been the push to have much more extensive monitoring and recording of electronic transactions. E-mail can now be monitored much more easily, and the new law requires records of tracking communications to be kept.

Since 2001, the Muslim population in France has come under particular police scrutiny, says Sebian. Young Muslims are victims of harassment in identity checks, and the dense concentration of young Muslims in city districts ridden with crime worsens the relationship between these youth and security forces. Police admit to using ethnicity and age as criteria for evaluation during security interventions on the ground.

Sebian found that not only Muslim leaders and representatives have been subject to police surveillance in the name of security, but Muslims employees are also often also under suspicion. After 9/11, security and cleaning companies working in airports and public buildings received requests from their employers to conduct background checks on their Muslim employees to ensure that none were members of terrorist networks. Some were even asked to dismiss groups of workers.

According to Sebian, French immigration policy is based on two broad main principles: equality for all backgrounds, and the expectation that immigrants will fully integrate into French society. As with many other European countries, from the post-war years until the 1970s, policy tended towards open acceptance of immigrants to support the national economy. During the widespread economic malaise of the 1970s, immigrants were not very welcome, as they were seen as contributing to employment problems. France struck agreements with the main countries of origin of the migrants to provide for social and political services and developed policies to encourage their return to their native countries. These policies were not very successful.

Over the course of the 1980s and 1990s, more restrictive laws were passed to reduce and reverse immigrant flows. However, in response to new policies from the European Union, many of these were softened to prevent discrimination during the last few years. After 9/11, the French government returned towards more restrictive immigration laws.

The electoral performance of Front National candidate Jean Marie Le Pen in the Presidential Elections of April/May 2002 sent shockwaves through the country and signalled the beginning of a radicalisation of discourses on immigration. The right-wing government elected the following year embarked on a strict anti-immigration policy – under Nicolas Sarkozy, as Minister of the Interior, police repression was one of the key themes.

In 2003, a new law entered into force which made it substantially easier to deport individuals who “have committed acts justifying a criminal trial” or whose behaviour “threatens public order”. Earlier versions of this law gave police the power to deport foreigners for participating in political demonstrations. In addition, increased penalties were introduced for illegal immigration, along with more temporary detention centres, and new limits on family reunification. Following the example of other European governments, France also instituted a

¹³ Euro-Islam.info, *Islam in France* (Authors Elizabeth Sebian & Jennifer Selby). Web <<http://www.euro-islam.info/country-profiles/france>>.

list of “safe countries” from which asylum seekers will be denied.¹⁴

In late October 2005, youth riots in a number of French *banlieues* (low-income densely-populated suburbs) created a security crisis for French authorities. Looking back on this episode, scholars and politicians are more inclined to recognize that socio-economic factors played a role in the course of events, but at that time, right-wing politicians and members of the government connected violence with the problem of Islam and immigration. These riots put immigration and integration concerns high on the political agenda, which has benefited extreme-right and anti-immigration parties.

Running parallel to this evolution of immigration and anti-terrorism discourse has been a movement to institutionalize controls through more severe immigration policies. After three weeks of riots in Paris in November 2005, immigration laws were tightened by Interior Minister Sarkozy. Two years later, on September 18, 2007, a bill was presented to Parliament with President Sarkozy’s backing that would authorize DNA testing for immigrants, and require applicants to pass language examinations and prove they can support themselves.

Moreover, any applicant over the age of 16 must demonstrate familiarity with French values, culture, and society. The bill coincides with Sarkozy’s renewed promise to begin deportation of the estimated 400,000 illegal immigrants. He vowed to deport 27,000 individuals in 2007 alone. The bill, especially its prescription for DNA testing, was criticized by French MPs and human rights activists, including Aurelie Filippetti of the Radical Citizen’s Socialist Party, and the French Human Rights League, which characterized DNA testing of immigrants as “offensive, inhumane and morally abhorrent”.

The bill was passed by Parliament on October 23, 2007. Apart from the issue of DNA testing, it was controversial because it also paved the way for the government to collect statistics on the ethnic origins of individuals to ensure diversity.

On November 15, 2007, the French Constitutional Court delivered its judgment on the bill. The Court threw out the article in the immigration bill that sanctioned census tracking of ethnic origins. But it did not challenge the amendment allowing for DNA testing of immigrant’s family. While warning against systematic use of DNA tests, the court did not find voluntary testing limited to cases of establishing a direct link with the mother to be unconstitutional.

This new immigration law also requires that applicant immigrants pass a language test, an exam on fundamental French values, and meet a minimum income level (established by the legislation) to ensure that they can adequately support themselves.

Although there is little official data on religiously motivated violence, intolerance against Muslims is reported to be on the rise in France. One of the most complete sources on Islamophobic acts in France is the information provided by the Collectif Contre l’Islamophobie en France (CCIF).

Founded in October 2003 “in reaction to the essentialist presentation of a monolithic Islam in the French public sphere”, the 15 volunteers working for the CCIF produced the first report in October 2004. Noting the “ambivalence” of the historical/conventional anti-racist organizations regarding the phenomenon of Islamophobia, the CCIF¹⁵ set itself the twin aims of “improving the information concerning the social expression of Islamophobia in France” and helping its victims with legal advice.

It serves as a centralizing body for the collection of data, and tries to raise public awareness in order to organize a coherent and efficient counter-strategy. The CCIF distinguishes carefully between ethnic/racist discrimination and Islamophobic acts.

CCIF reported 182 Islamophobic acts targeting individuals and institutions during the period October 2003 to August 2004, including 27 physical aggressions (four of which being rather serious), 29 degraded mosques and 11 vandalized cemeteries with more than 200 profaned

¹⁴ Ministère des Affaires étrangères et européennes/French Ministry of Foreign and European Affairs, 2007, French Immigration Policy, Law No. 20031176, 10 December 2003. <http://ambafrance-eau.org/IMG/immigration_policy.pdf>

¹⁵ Collectif Contre l’Islamophobie en France, *Rapport d’étape 2003–2004* (CCIF Report 4).

tombs.¹⁶ 61 acts targeting Muslim institutions include expulsions (presumably of religious personnel), last-minute cancellation of conferences (often those of Tariq Ramadan, a Swiss born intellectual), and the closure of mosques or freezing of mosque projects, (attacks against other) Muslim structures, cemeteries and vandalized mosques. The Islamophobic acts reported are mostly concentrated in Île-de-France, Alsace and Rhône-Alpes: roughly two-thirds of all acts.

Media Coverage

The media coverage of Islam is undoubtedly the most researched aspect of Islamophobia in France. Drawing on Edward Saïd's *Covering Islam: How the Experts Determine How We see the Rest of the World*, social scientists have critically plunged into the world of representation of Islam in the media.¹⁷

One of the most persuasive chapters in Vincent Geisser's book deals with Islamophobia in the media.¹⁸ Geisser delivers a nuanced analysis of the media's treatment of the Muslim question. He argues that discourse on Islam in the media is not homogenous and constitutes just one element in a wider discursive field. Media does not create Islamophobia as much as they operate a "*mise en ordre du senscommun*" (ordering of common sense) about Islam and Islamism.

This is achieved through a number of procedures, including the selection of contents, themes and images the cooptation of "legitimate" figures and "experts" (en)able(d) to interpret and give meaning to the event; finally, the production of Muslim heroes and anti-heroes. The *senscommunmédiatique* (media common sense) contributes, according to Geisser, to the banalisation of Islamophobia.

Some of the media's failings in the treatment of Islam are structural and endemic: absence of thematic specialization; irregularity of the follow-up of the subjects and self-censorship. Geisser nevertheless reproaches the journalists' "total absence of critical distance towards popular emotions and passions".

Islam is seen not as an "ordinary social object" but always as a "potential danger" – and the media have responded to fear by fear, meeting an implicit social demand: instead of knowledge on Islam and the social practices of Muslims, French audiences desire expertise on the risks of infiltration by Islamic terrorism.

The study of audiovisual representations of Islam by Thomas Deltombe is set to become the reference in the field. Drawing on thirty years of 8 o'clock TV news coverage, Deltombe contextualizes the audiovisual construction of an "imaginary Islam" which reflects tensions and fears within the larger French society.

Islam appears as an "evanescent phenomenon", disappearing as suddenly as it appears in the news; the treatment of Islam is always partial, covered exclusively in its crises and through its problems; and television coverage progressively constructs a binary world where the gap between the West and Islam is steadily widening, separating Muslims in France into only two exclusive categories of either moderate or Islamist.

Among national daily print media there seems to be a graduation in the level of Islamophobia. *Le Monde*, and in particular its social and religious affairs journalist Xavier Ternisien, have been at the forefront of the denunciation of the phenomenon. By contrast, for the centre-right daily *Le Figaro*, Islamophobia seems to exist only as an "alibi".¹⁹

SITUATION REPORT: THE NETHERLANDS

Muslim population

The history of Islam in the Netherlands started in the 19th century when the Netherlands

¹⁶ *Ibid.*

¹⁷ Edward W Saïd, *Covering Islam: How the Media and the Experts Determine How We See the Rest of the World*. New York: Pantheon Books (1981).

¹⁸ Vincent Geisser, *Intellectual and Ideological Debates on islamophobia: A "French Specificity" in Europe?*

¹⁹ *Islam in France.*

experienced sporadic Muslim migration from the Dutch East Indies when it was a colony of the Netherlands. Economic growth from 1960 to 1973 led the Dutch government to recruit large numbers of immigrant workers, chiefly from Turkey and Morocco, and migration has continued by way of family reunification and asylum seekers.

According to the Pew Forum, 2010 data shows that the country hosts an estimated 914,000 Muslim individuals. They constituted 5.5 percent of the country's total population. By 2030, the number is expected to swell to 1,365,000 or 7.8 percent of the population.. Most of them live in the four major cities of the country, Amsterdam, Rotterdam, The Hague and Utrecht.²⁰

Anti-terror laws and immigration policies

The 9/11 attacks, the 2004 terrorist attacks in Madrid, the assassination of Dutch filmmaker Theo van Gogh in November 2004, and the 2005 bombings in London have led to a proliferation of plans for anti-terrorism measures in the Netherlands.

After 9/11, the government presented an Action Plan to Fight Terrorism and Security (*Actieplan Terrorismebestrijding en Veiligheid*) and in 2004 a national anti-terrorism coordinator position was created. The government invested considerable effort creating initiatives to prevent further radicalization that involves community building, strengthening individuals' attachments to civil society, and adequate capacity for interventions against radicals. But the reality looks different.

In February 2008, the European Commission against Racism and Intolerance (ECRI) released its most recent report on the Netherlands. While the report does not include statistical or numerical data on several key issues, it nevertheless reports on both setbacks and progress made since the previous report on the Netherlands, released in 2000.

This release, its third report, applauds the development of international instruments relevant to combating racism and racial discrimination in the Netherlands. Anti-discrimination bureaus established to protect victims of racism and discrimination against immigrants and monitor these kinds of offences are cited as steps in the positive direction. In addition, attention given to the disadvantaged positions of members of ethnic minorities in the labour market is cited as encouraging in the report.

However, an analysis by Euro-Islam.info finds that a number of recommendations made in the ECRI's second report have not been met. This is due partly as a consequence of several "national and international events, the tone of Dutch political and public debate around integration and other issues relevant to ethnic minorities has experienced a dramatic deterioration", resulting in polarization between majority and minority communities. Muslim, and notably the Moroccan and Turkish communities have been particularly affected by these developments, which have resulted in a substantial increase of Islamophobia in both the political arena and in other contexts.

Media coverage

Since the 1980s, media coverage in the Netherlands on Islam has jumped from incident to incident: the Iranian Revolution, the "Rushdie-Affair", the cancelling of a December 2000 opera performance of "Aisha and the Women of Medina" because it was considered offensive to Islam. In May 2001, the television program NOVA broadcast an interview with Moroccan imam Mr. El Moumni, who criticized homosexuality as a "contagious disease" and made other offensive critiques of European lifestyles, leading to the "El Moumni affair".

Subsequently, the events of 9/11, bombings in London and Madrid, the Dutch filmmaker van Gogh's murder, and Ayaan Hirsi Ali's controversy have all received heavy media coverage. Hirsi Ali is a Somalia-born Dutch politician and writer (as of July 2007, she works for a conservative think tank in Washington, DC), who received attention for her critique of Islam as a misogynistic and backward religion and was the centre of a political controversy

²⁰ *The Future of the Global Muslim Population.*

regarding the integrity of her citizenship application.

In spite of the sensational coverage, Uitermark and Hajer, in a study of public debate in national newspapers surrounding the van Gogh murder, concluded that “after an initial period of moral confusion and a search for new meaning-giving narratives, there was a marked rise in the appreciation of several structural problems that face migrants in the Netherlands”.²¹

SITUATION REPORT: DENMARK

Muslim population

Islam is the largest minority religion in Denmark. According to the United States Department of State, approximately 3.7 per cent of the population in Denmark is Muslim.²² Other sources, including the Royal Danish Ministry of Foreign Affairs, cite lower figures.

As of January 2009, 9.5 per cent of the Denmark’s total population are immigrants. In Denmark it is not legal to register an individuals’ religious affiliation. Exact figures of Muslims are therefore not available. But the estimated number is 226,000 , making up 4.1 per cent of the total Danish population. In 2030 the number is projected to increase to 317,000 or 5.6 percent of the total population.²³ Asylum seekers from Iran, Iraq, Gaza and the West Bank, who mostly arrived in the 1980s and from Somalia and Bosnia who arrived in the 1990s are estimated to comprise about 40 per cent of the Danish Muslim population.

Anti-terror laws and immigration policies

Two significant pieces of legislation related to terrorism have come into effect since 9/11. In June 2002, a package of laws called L35 was passed by the *Folketinget* (national parliament of Denmark) to combat international terrorism. These laws give police greater powers of surveillance, which can be used against Muslim individuals and groups. It allows for the tapping and monitoring of emails without formal permission of a magistrate, increased resources to use secret informants. It requires telecommunication companies and internet providers to record all internet traffic and mobile telephone communication.

In June 2004, the *Folketinget* passed the so-called “Imam Law”, which requires religious leaders to speak Danish and respect “Western values” such as democracy and the equality of women. Further legislation gave the Danish government the right to reject “foreign missionaries” who espouse radical views. Although Danish constitutional law does not allow the mention of religion, the bill was widely viewed as being targeted at Muslims.

In May 2009 the parliament enacted a law which forbids judges to wear any religious or political symbols in court. The judiciary voiced a principled opposition to the legislation, as the law is widely regarded as way of preventing female Muslim judges from wearing a hijab to court. However, there have not been any Muslim judges wearing the hijab to Danish courts to date.

In the fall of 2009, the Federal Bureau of Investigation and the Danish Intelligence Service arrested two men whom they suspected of planning a terrorist act on the headquarters of the Jyllands-Posten newspaper, the newspaper which first published the Muhammad cartoons. David Coleman Headley and Hussain Rana, both residing in the United States, were charged with plans to blow up the Jyllands-Postens headquarters and plans to kill cartoonist Kurt Westergaard and editor Flemming Rose. They were also charged with being part of the terrorist attack in Mumbai in November 2008.

²¹ Maarten Hajer & Justus Uitermark, 'Performing Authority: Discursive Politics after the Assassination of Theo van Gogh', *Public Administration*, 86 (1): 5-19, 2008.

²² U.S. Department of State: Bureau of Democracy, Human Rights, and Labor, *Report on International Religious Freedom*, 2009.

²³ *The Future of the Global Muslim Population*.

Bias and discrimination

Denmark has an anti-discrimination law, Criminal Code Article 266b, which prohibits dissemination of racist statements and racist propaganda. Article 266b criminalizes insult, threat or degradation of persons, by publicly and with malice attacking their race, colour of skin, national or ethnic roots, faith, or sexual orientation. When a number of Muslim organizations filed complaints with Danish police against Jyllands-Posten, they claimed that the newspaper had committed an offence under 266b and the Blasphemy Law (Criminal Code Section 140).

The Blasphemy Law prohibits disturbing public order by ridiculing or insulting the dogmas of worship of any lawfully existing religious community in Denmark. Public authorities, first the Regional Public Prosecutor and later the Director of Public Prosecutors in Denmark, found no basis for concluding that the cartoons constituted a criminal offence, given that in this case public interest was better served by protecting the right of editorial freedom to journalists.

The first complaint was filed on October 27, 2005 to the Regional Public Prosecutor in Viborg. On January 6, 2006, the Regional Public Prosecutor discontinued its investigation on the grounds that no criminal offence had been committed. On March 15, 2006, the Director of Public Prosecutions filed a decision supporting actions taken by the regional Public prosecutor. Though these legal resolutions decided in favour of Jyllands-Posten's right to editorial freedom of expression, they also identified the need in Danish society for a respectful dialogue about Danish and Muslim values, ultimately suggesting that while the newspaper would not be censored, it also had a responsibility to contribute to a respectful climate.

In its conclusion, the decision by the Director of Public Prosecutions averred that statements by the Jyllands-Posten defence were "not a correct description of existing law" when they claimed that "it is incompatible with the right to freedom of expression to demand special consideration for religious feelings" and that one has to be ready to put up with "scorn, mockery and ridicule".

International organizations have been among the most vocal in condemning what they perceive to be anti-Muslim sentiment in Denmark. In its Third Report on Denmark published in May 2006, ECRI noted, "since the publication of ECRI's second report on Denmark on 3 April 2001, progress has been made in a number of fields highlighted in that report ... However, a number of recommendations made in ECRI's second report have not been implemented, or have only been partially implemented ... The general climate has continued to deteriorate in Denmark, with some politicians and parts of the media constantly projecting a negative image of minority groups in general and Muslims in particular ... There is still no clear and coherent policy for ensuring that minority groups have equal access to employment, housing and education."²⁴

Iben Helqvist and Elizabeth Sebian point out in an analysis²⁵ that some scholars have ventured to claim that Denmark has become one of the most staunchly anti-Muslim nations in the West.²⁶ This sentiment is also reported by domestic observers and social science researchers.²⁷ Two other publications have supported this perception: the first was a PhD dissertation by a Danish scholar in 2001 claiming that there was widespread cultural racism in Denmark directed particularly at Muslims long before 9/11;²⁸ the second was a report by the European Monitoring Centre (EUMC) which placed Denmark on top of the list of countries

²⁴ Council of Europe: European Commission Against Racism and Intolerance (ECRI), *Third Report on Denmark*, Adopted on 16 December 2005, 16 May 2006, CRI(2006)18.

²⁵ Euro-Islam.info, *Islam in Denmark* (Authors Helqvist Iben & Elizabeth Sebian). Web < <http://www.euro-islam.info/country-profiles/denmark/> >.

²⁶ John Andersen, J.E. Larsen & I.H. Moeller, 'Exclusion and Marginalisation of Immigrants in the Danish Welfare Society – Dilemmas and Challenges', *International Journal of Sociology and Social Policy* 29 (5/6): 274-86, 2006.

²⁷ Open Society Institute, EU Monitoring and Advocacy Program, Muslims in the EU, Denmark, Preliminary research report and literature survey report 2007

²⁸ Karen Wren, 'Cultural Racism in Denmark – Something is Rotten in the State of Denmark', *Social & Cultural Geography*, 2 (2): 141-62, 2001.

where there had been a sudden increase in racial attacks against minorities.²⁹

In addition to this documented rise in discrimination and cultural racism, the UN Committee on the Elimination of all Forms of Racial Discrimination said in its 2002 report that there had also been a substantial increase in the number of attacks on Muslims since 9/11. For example, the Danish police report hate crimes to the Danish Civil Security Service (PET), but do not categorize these incidents as anti-Muslim, anti-Semitic, or anything else. In 2004, the PET database recorded 32 “racist/religious” incidents.

In the period between January 1 and October 13, 2005, the Documentation and Advisory Centre on Racial Discrimination (DACoRD), a nongovernmental organization that collects information on a wide range of racist and xenophobic incidents, recorded 22 Islamophobic incidents, eight of which were also documented in the PET database.

Media Coverage

Since September 2001, the coverage of Muslims in the Danish media has been dominated by security and terrorism. According to Iben Helqvist and Elizabeth Sebian, there is a gap between the scale of coverage given by newspapers to arrests connected to terrorism and the lack of coverage when arrested individuals are subsequently released without charge. Analysis of Danish news media found that Muslims also face stereotyping through culturalist interpretations of crimes where the perpetrator is Muslim, that is, a tendency to explain crimes committed by Muslims with reference to their religion.

Helqvist and Sebian point to Brian Arly Jacobsen’s research on the Danish debate on immigrants, saying that he has “found that there were similarities in the way Danish politicians talked about Jews before World War II and the way they talk about immigrants today”. He concluded that the cultural and religious practices of Muslims were seen as an antipole to Danish culture.³⁰

Media coverage of Muslims in Denmark has been focused on divisive controversies. After the murder of Dutch filmmaker Theo Van Gogh in the Netherlands, a public Danish television station was sued by a group of Muslims for repeatedly airing his film “Submission”, which was widely regarded as offensive by Muslims. This episode received media attention at the time. The most significant controversy in Denmark, however, followed the publication of 12 cartoons in the Danish newspaper *Jyllands-Posten* on September 30, 2005, that caricatured Islam and the Prophet Muhammad.³¹

IDN-InDepth News carried a report from Copenhagen on November 21, 2011, highlighting yet another aspect: “Even though non-white migrants seem to be moving freely within the cities, often communicating, fluently in the local language, migrant media practitioners ... were very critical of the lack of access they get to the mainstream media to counter negative perceptions about them in national newspapers, radio and television”.³²

“They say you can speak free in Denmark but I don’t believe in it”, said Reza Mustafa, who was born in Copenhagen to Pakistani parents and broadcasts on Radio Humwatan, a community radio station in the Danish capital. He argues that broadcasting to one’s own community in Urdu or Punjabi does not help to change the negative perceptions of Muslims and migrants from the South in the Danish society.

Since he speaks Danish fluently, when he was asked why he couldn’t broadcast on the national radio network Denmark Radio, he answered: “It’s only for those people who are well recognized. They can talk and it’s their right to talk about anything, but if I say anything critical of Americans they (the law enforcement authorities) will threaten me.”

²⁹ EUMC European Monitoring Centre on Racism and Xenophobia, *Summary Report on Islamophobia in the EU after 11 September 2001*, Vienna, May 2002.

³⁰ Brian Arly Jacobsen, *Videnskabet 4-2009: Jøder og muslimer på den politiske dagsorden*, 18 March 2009. Web. <<http://universitetsavisen.ku.dk/dokument9/nyhedsarkiv/2009/dokument61>>.

³¹ *Islam in Denmark*.

³² Kalinga Seneviratne, *Time for European Rights Advocates to Look Inwards* (IDN-InDepthNews, 21 Nov 2011).

An IDN correspondent said “European countries like Denmark have been leading voices over the past four decades for promoting human rights across the world, and through their foreign aid programmes, they have been funding media projects which sought to teach people in the South how to allow minorities in their countries access to the media. Denmark’s foreign aid agency, Danida, has funded many projects in Africa and Asia to promote community radios.

“Now, within their own society with the increasing hostility of the native white population towards migrants from developing countries, the very projects Denmark has been promoting overseas are needed at home. With migrant communities lacking a voice in the media, it is time human rights activists question whether Europe’s human rights advocates should focus their attention inwards”.

CONCLUSION

“One should never do wrong in return, nor mistreat any man, no matter how one has been mistreated by him,” Socrates is reported to have said in his conversation with Crito in 399 BC before his execution in Athens. Also the Christian doctrine of turning the other cheek refers to responding to an aggressor without violence. Such views are seen to have no relevance to practical politics and have therefore not been under consideration at any stage since 9/11.

“Terrorism was not born on 9/11 and it is not over with the death of Osama, but the world has changed in the last decade, [...] Over the last 10 years, we have often been confronted with the question of the delicate trade-off between freedom and security”, said President Jerzy Buzek, President of the European Parliament, prior to the 10th anniversary of 9/11.³³ He added, “we should never give in to the temptation of sacrificing the former at the altar of the latter: if we did, what we are trying to secure would be void of value. It is the duty of all those that believe in democracy to preserve the highest possible standards of individual liberty.”³⁴

But Member States across the EU find themselves faced with a dilemma: to preserve cherished democratic values of which Europe is proud of, or to combat “terrorism”, which is perceived as a threat to those values.

The dilemma has been summed up in 2009 by young researcher, Matthew Barnes as such:

Governments tell us that today’s anti-terror legislation is in place to protect us and our rights as free citizens of a democratic state. However, we find ourselves asking, do these laws not actually go against the values of democracy by allowing the government to step outside its normal boundaries in certain cases? These laws create exceptions which allow for a totalitarian government, if only temporarily. These laws operate on a vocabulary that allows for a degree of subjective interpretation and this means that the laws can escape their original boundaries. Words like “suspicious”, “threat”, “terrorist” and especially “reasonable”, are all open to interpretation. Who defines what reasonable means?³⁵

³³ European Parliament Press Service, *Buzek on the 10th anniversary of the 9/11 terrorist attacks* (9 Sep 2011).

³⁴ *Ibid.*

³⁵ Matthew Barnes, *Anti-Terror Legislation in the Netherlands Post 9-11* (PiCA, 2009).

NATIONAL SECURITY, ANTI-TERROR LAWS AND IMPACT ON MEDIA IN SELECTED ASIAN COUNTRIES

SYED JAVED NAZIR

INTRODUCTION

Anti-terrorism laws and policies appear to be restraining the freedom of expression and the access to information across Asia. The situation in South Asia, which has emerged as a major hub of terrorism, is particularly worrisome. The ability of journalists to gather and disseminate news is undermined. Pakistan and Sri Lanka are two nations where counter-terrorism laws increasingly present the biggest challenge to media freedom. The struggle to get the truth out now confronts a new show of belligerence from governments who seek to establish “a state of exception”¹ to counter terrorist activities. These two governments have stretched these laws to suppress political dissent and, more importantly, they want no impartial observers to keep an eye on their massive anti-terrorism operations. Countries like India, Indonesia and the Philippines too have brought in a phalanx of anti-terrorism laws that seem to impinge on the media’s ability to provide unalloyed and credible information to the citizens.

Advanced democracies are also facing challenges in balancing national security with civil rights. There are growing voices in Europe in support of a review of anti-terrorism legislation to protect democracy and human rights. British parliamentarians, for instance, have called for a review of the country’s anti-terrorism laws.² Similar concerns have been expressed in Australia, a country that has amassed 40 anti-terrorism laws since 9/11/. A sizeable body of literature documenting the negative impact of counter-terrorism laws and policies across the world on civil rights is growing. Some studies have also been conducted to examine the impact on social movements or simply dissent.

The fallout for the media is now increasingly the subject of focus for social scientists. International journalistic entities have been spurred into action following the sledgehammering of journalists in Pakistan and elsewhere, especially those who keep a sharp eye on security operations that harm civilian populations. Seminars and discussions have been planned to evaluate the extent of the impact. There is increasing recognition that anti-terrorism laws are giving authorities sweeping powers to conduct surveillance on journalists. The protection of journalists’ sources and their rights are frequently put in jeopardy. In Pakistan, newspapers are being shut down, websites are taken down, and journalists are being threatened, incarcerated and in extreme cases, murdered or killed. Journalists are also bearing the brunt of laws protecting state secrets, sedition and national security laws. Indeed, there is a perception among scholars and rights campaigners that laws and policies enacted to fight terrorism have been disproportionate and have been abused.³

There is much debate among media practitioners whether their ethics need to be questioned when covering counter-terrorism operations, where it may involve possible state

¹ Honor Brabazon, *Protecting Whose Security?: Anti-Terrorism Legislation and the Criminalization of Dissent* (YCIS Working Paper Number 43), York Centre for International and Security Studies, York University, 2006)

² BBC News, 'Review all anti-terrorism laws, say MPs' (25 March 2010). Web <http://news.bbc.co.uk/2/hi/uk_news/politics/8583643.stm>.

³ Bob Dietz, *A legal attack accompanies assault on Pakistani journalists* (CPJ Blog, Committee to Protect Journalists, 2011). Web <<http://www.cpj.org/blog/2011/06/a-legal-attack-accompanies-assault-on-pakistani-jo.php>>.

complicity in violating the civil liberties of population caught in the cross-fire. Two questions, however, arise as media coverage of terrorism continues – does this coverage impart credibility to terrorist groups and produce a kind of “contagion effect”?⁴ Or do journalistic practices and traditions err on the side of caution by siding with the governments, thereby creating support for their security policies. Friction and lack of trust define the relationship between government and the media about the framing of terrorism, censorship and restrictions on freedom of expression with a view to buttressing national security. The media have the responsibility to construct interpretive frames and offer different perspectives to help the citizens understand security issues, and hence appeared to be in constant struggle with the governments over different perceptions of reality. Anti-terrorism laws straddle across different policy boundaries, impacting the workings of the administration, constitution, etc.⁵ It is hard to study the anti-terrorism laws of any state in isolation from its domestic environment, embodying political, administrative, societal and economic domains. We also need to factor in regional and international developments in order to have a better understanding of the anti-terrorism laws and their impact on a country. The issue of terrorism in India is different from that in Pakistan. The latter is perceived as the incubator of terrorism; the former’s image is that of a victim. But both have daunting anti-terrorism laws. What is clear though is that rule of law is key to the success of anti-terror strategy.

That said, there are fears that these laws may also cause long-term consequences. As they are, counter-terrorism laws can have a lasting impact, among others, on the right to a fair trial; the right to freedom of expression; the right not to be subjected to arbitrary detention; the right to freedom from torture and degrading treatment and punishment and the right to privacy.

Before we start our focus on Asia, it would be instructive to explore the probable impact of terrorism laws on journalists. According to some scholars such as Norris, the new anti-terrorism laws or amendments to criminal codes can have serious consequences arising from the restrictions they place on what journalists can write or broadcast on acts of terrorism; the restrictions on information with regards to investigations and prosecutions of specific cases of terrorism; and restrictions on how journalists might get information about or from terrorists or suspected terrorists. The laws also seek to restrict traditional protection given to journalists’ sources, making it an offence for journalists to withhold any information from policy or security forces. In the case of Pakistan, even the freedom of movement for journalists can be restricted.⁶

Police and security forces could be armed with powers to detain people or prevent access. It would seem that laws vary from country to country.

SITUATION REPORT: PAKISTAN

Pakistan has emerged as the most dangerous place for journalists to operate in recent years. In December 2010, Reporters Without Borders reported that 11 journalists were killed in different acts of violence across the country.⁷ The same level of violence is continuing in 2011. The statistics for the last 17 years are heart-wrenching: 47 journalists lost their lives, a large number of them during acts of terrorism and violence.⁸ How the courts have responded to such violence is an important question, for it is they who are ultimately responsible for ensuring the rule of law in a society.

There is little or no evidence that perpetrators of violence against journalists were

⁴ Pippa Norris, *Driving Democracy: Do Power-Sharing Institutions Work?*. Cambridge: Cambridge University Press, 2008.

⁵ Shabana Fayyaz, 'Responding to Terrorism: Pakistan's Anti-Terrorism Laws', *Perspectives on Terrorism* 2 (6): 10-19, 2008.

⁶ *Driving Democracy*.

⁷ Reporters Without Borders, Pakistan Report 2010. Web. <<http://en.rsf.org/report-pakistan,74.html>>.

⁸ Broadcast Pakistan, 'Killers of 46 Pak Journalists still at large' (17 January 2011). Web <<http://broadcast.pk/?p=369>>

punished by the country's criminal justice system, or that these murders were ultimately resolved. Of course, there was one exception – the case of the American journalist Daniel Pearl, whose killers were punished under intense pressure from the United States. A preponderant number of the journalists were killed while covering Pakistan's volatile politics in Baluchistan, Pakistan's North-East and Karachi. Many of these journalists were from the country's vibrant print-media. The New York-based Committee for the Protection of Journalists (CPJ) says it has a list of 15 murders which appeared to be targeted killings of journalists since the death of Daniel Pearl. Pakistan's harsh blasphemy laws have also been used to suppress freedom of expression.⁹

Fatalities among journalists have been mounting as they are pushing hard to gather information in a post-9/11 climate fraught with dangers for them and their work. They have also started exploring some of Pakistan's taboo subjects – military operations and military tactics, and especially on Pakistan's infamous and powerful intelligence agency, the Inter-Services Intelligence (ISI). Historically, Pakistani journalists have been the victims of violence from fanatic religious groups, drug-barons, the state's secret service agents, political groups and, at times, ordinary criminals. In the last ten years, Pakistan's media landscape has become much more vibrant with the launching of dozens of new 24-hour satellite TV news channel.

The competition among rival newspapers and TV channels is keener than ever and concomitantly, the hunger for news has grown several-fold. It is little surprise then that journalists are probing hard for news and no segment of society is off-limits for them any longer. Crucially they are now operating under the country's terrorism laws as well. And when they seek information in sensitive areas (considered as "classified" by the government) their role becomes adversarial in the eyes of the government, and the military and intelligence agencies. The recent high-profile murder of Syed Shazad Saleem, a pesky and determined reporter, allegedly at the hands of ISI, has set off debates in Pakistan and elsewhere on issues of the freedom of expression and the role of spies who are at the forefront of the war against terror¹⁰.

Before we move on to discuss the impact of anti-terrorism laws in Pakistan on journalism, we need to establish the context and examine the extent and reach of these laws. For almost three decades, Pakistani governments have taken special legal measures to counteract criminal behavior, bypassing the regular criminal justice system. It is curious that the governments in the 1970s saw political violence and nationalist aspirations in two of the country's four provinces through the prism of terrorism. The rationale behind the extra-constitutional measures was that the regular justice system was too slow to respond to such offences. The extra measures were supposedly aimed at delivering speedy justice. However, these measures were really targeted at stifling dissent on the one hand and extending the executive's control over the legislature and its political opponents, on the other.¹¹

Legislation in Pakistan against violent/terrorist acts goes back to 1949 with the promulgation of the Public and Representative Offices (Disqualification) Act. The government used this piece of legislation to suppress political violence. But political violence gradually "morphed" into ethnic conflicts and sectarianism and ultimately spawned a range of militant organisations with overtly radical ideologies. The governments that followed established new laws or amended the existing one to deter the so-called terrorists. Significantly Prime Minister

⁹ Freedom House, *Freedom in the World 2009 - Pakistan*. Web.
<<http://www.freedomhouse.org/template.cfm?page=22&country=7678&year=2009>>

¹⁰ Andan Rehmet, 'Silenced once again' (Dawn, 31 May 2011). Web
<<http://www.dawn.com/2011/05/31/silenced-once-again.html>>

¹¹ Saba Noor, 'Evolution of Counter Terrorism Legislation in Pakistan', *Conflict and Peace Studies* 1 (1), 2008 (Pak Institute of Peace Studies).

Zulfiqar Ali Bhutto was the first leader to use the words “terrorist activities” in late 1970s and set up specials courts. In 1997 Nawaz Sharif’s government finally gave the country its first specific anti-terrorism Act, which successive governments continued to amend in keeping with their needs. Pakistan’s anti-terrorism laws cover the entire spectrum of terrorist activities – what they lack is effective implementation. Media reports indicated that the courts often – acquitted criminals due to lack of evidence.

In Pakistan, terrorism has been mostly defined in political terms. Opposition to the central government was often characterised as an anti-state act. The law was open to abuse and critics of the government – be they politicians, intellectual or journalists – have been branded as traitors. The line between political violence and political opposition has remained blurred. The Anti-terrorism Act of 1997 considered murder, the malicious insult of religious beliefs of any class, derogatory remarks against holy personages, kidnapping and robbery as acts of terrorism. The legislation clearly had ramifications for Pakistani society. More amendments have been incorporated into anti-terrorism laws in recent years. Support from Civil society and the media are crucial for these laws to have an impact. The way these laws have been used in the past inspires little confidence among the citizens of Pakistan.

In sum, anti-terrorism laws were supposed to provide the government in Pakistan with effective instruments of deterrence to maintain peace and order, but – politicians have instead used them to perpetuate their power and stifle their critics. Against this backdrop, the media in Pakistan operates without any legal protection from state organs. Journalists who have the audacity to cross the red line pay a steep price. It is sad that most cases of state intimidation and criminality against journalists do not get publicised in Pakistan. Owners and publishers of newspapers and TV networks choose to remain quiet. They treat cases of intimidation as a matter of routine and as predictable hazards associated with the profession. Neither is journalists given personal safety training. The instincts of targeted journalists are to avoid talking in the open for fear of retribution.

Here are some instances that serve to illustrate how media are impacted by anti-terrorism laws directly and indirectly. In the process, the role of the state’s secret service agencies that are the supposed spearheads of the country’s terrorism strategy gets highlighted too and it helps one to understand why the media are at odds with them at times.

Impact on the Media: Assassination of Journalist Syed Saleem Shahzad

Syed Saleem Shahzad was found dead on 29 May 2011. His body was recovered from a small town in Pakistan’s largest province, Punjab, two days after he disappeared while supposedly heading towards Islamabad to cover an event. His body bore unmistakable marks of torture. Saleem worked for Asia Times Online as its bureau chief in Pakistan. He was reportedly after a “big” story – namely, speculations that Al-Qaeda and the Taliban had infiltrated Pakistan’s powerful ISI. Before his death, he had hinted that some senior ISI officer had warned him to “back off” the story. The facts surrounding his death are still largely unknown, while some journalists believe he chose to remain true to who he was: someone who was determined to get his hands on the story and who ostensibly paid the price with his life. The ISI denied having any hand in his death.

Saleem has been described as a gentle soul but investigating and writing stories on international security and terrorism in a country like Pakistan has its risks. He was focused on the Pakistan’s armed forces, the northern tribal belt, Al- Qaeda and the Taliban militancy. Earlier this year he wrote a challenging and daring book *Inside Al Qaeda and Taliban: Beyond Osama bin Laden and 9/11*. It is common knowledge now that he had been receiving threats from the militants as well. In fact, days before his disappearance, he wrote the first part of a report about the extent of Al Qaeda’s infiltration in the lower ranks of the Pakistan’s Navy.¹²

¹² 'Al-Qaeda had warned of Pakistan strike', Syed Saleem Shahzad, Asia Times Online, 27 May 2011. Web <http://www.atimes.com/atimes/South_Asia/ME27Df06.html>.

Before we analyse the impact of his murder on other intrepid reporters, it is worth recalling that top US military official Admiral Mike Mullen was quick to accuse the Pakistani government of authorising the killing of journalist Saleem Shahzad. Besides causing profound embarrassment for Pakistan's, military and of course, the ISI, the Admiral's blunt comments fuelled speculations about the role of the ISI in the death of a number of journalists in recent years. Not just Admiral Mullen, but almost all journalist watchdog organisations across the world took up the cases on behalf of the fallen journalists. The Pakistan's government said in public that it would investigate Saleem's death, but not many believed the public posture. Many high-profile assassinations in Pakistan just become history – they were never properly investigated and no culprits found and punished. Journalists in Pakistan are aware that they can be targeted easily by both state and non-state actors, and Mullen's remarks definitely play into the perception that one could not afford to be on the wrong side of the ISI, the military or anti-terrorism laws.

Anti-terrorism laws have indeed become a tool to coerce journalists into conformism. Most of them choose to exercise restraint and self-censorship and hence reduce their own freedom of expression. They either stay away from writing on issues of national security or else defer to the official narrative. Only a handful chooses to soldier on.

Impact on the Media: 16 Pakistan Journalists Are Seeking Relocation Outside the Country.

In the aftermath of Saleem Shazad's murder, threats to journalists have multiplied. The New York-based Committee for the Protection of Journalists (CPJ) has documented and processed requests from 16 Pakistani journalists who wish to be moved out of Pakistan.

CPJ believes an equal number has already dispersed to parts of South Asia and abroad. This is a terrible blow for the development of journalism in Pakistan, which was just coming of age and is vital for the health of Pakistan's brittle democracy. The message for the young and aspiring journalists sounds dire: move to other fields for a normal life or else. The dice is loaded against Pakistani reporters writing for foreign media especially if they go after investigative stories on the security establishment and militant organizations. The risks of being harassed and intimidated are high. Of late, there has been a subtle calibration of intimidation from the military. An example of such intimidation include for instance, if an investigative journalist was picked up by the military when entering into an out-of-bounds territory for photographing, he would have his hands bound behind his back and then driven hundreds of miles to be left in the wilderness. One gutsy journalist had to walk miles and miles in a disheveled state to reach a habitation.

Impact on the Media: Four Journalists Arrested Under the Anti-terrorism Act

In July 2011 four journalists in Minawali were arrested by the authorities exercising their anti-terrorism powers. The journalists were engaged in a peaceful protest to voice their disgust over periodic power outages. They were part of a small peaceful group who had decided to take to the streets to register their anger. The Human Rights Commission of Pakistan has called these arrests unwarranted and unconstitutional. The journalists were merely exercising their basic right of assembly. By arresting the four journalists, and invoking ATA, the government wanted to send a strong signal that anti-terrorism laws are broad enough to punish any deviant behaviour.

Impact on the Media: The Torture of Journalists Rafique Baloch and Umar Cheema

Journalists Rafique Baloch and Umar Cheema, investigative reporters for The News International, are surprisingly still alive. Both were allegedly picked up by intelligence goons and tortured. Details are scant for obvious reasons. Just this year, Wali Khan Babar, a

reporter for the GEO TV, died while following a great lead about the security situation in Karachi. Journalists are living on edge and are worried about their future, because Pakistan is a society that has been mostly at war with itself.

Safety of Journalists Getting Worse

Anti-terrorism laws have failed to deliver in Pakistan because they were primarily perceived to be instruments of coercion, designed to suppress enemies of the state, both imagined and real rather than dealing with the real threat of terrorism. They are an addition to the state's awesome arsenal to brutalise naysayers and critics. The government, military and the ISI may be shooting themselves in the foot by squeezing the activities of a determined media, for institutions that do not hold themselves to accountability ultimately lose their credibility in the public eye. Anti-terrorism laws have lost their efficacy, because they are aimed at disabling the expressive powers of society, like media and other dissenting voices. On the other hand, criminals, extremists of all persuasions, and terrorists hardly feel the heat of these measures.

Today, judges are wary of dishing out punishment to terrorists for fear of reprisals. Most citizens are not ready to give evidence against those who plant bombs to cause devastation. As a consequence, terrorists are feeling safer than the media personnel who have to duck bullets coming from those who are supposed to protect them. There is a strong pro-journalists sentiment among Pakistani citizens, for they feel the truth is not reaching them. This is very discouraging to young men and women who work tirelessly, and against great odds, for the Pakistani media.

Syed Saleem Shahzad and others who fell to bullets and bombs in line of duty have set a gold standard of personal courage and professionalism. Their sacrifices for a free media leave little room for pessimism in terms of a future of free media in Pakistan. The country's security establishment has been in the dock for quite some time for their alleged involvement in silencing critical voices. The onus is now on the country's highest court to help restore some balance between security concerns and basic freedoms.

SITUATION REPORT: INDIA

India, the world largest democracy, comes only second to Pakistan in terms of the number of journalists killed last year.¹³ Seven journalists perished in India in 2010 in the line of duty, mostly via targeted violence. Almost all international journalistic watchdog organisations consider India to be an inhospitable environment for journalists. There has been a bizarre spike in violence, threats and intimidation in recent years. Three fatalities among journalists have already been reported for 2011.¹⁴ India ranks 120th worldwide in Reporters Sans Frontiers press freedom index.¹⁵

One could argue that for a country of a billion people, these numbers may not strike a particular dread in the hearts of journalists in India, but given India's moral and democratic stature, any rollback on the freedom of the media is disconcerting. The spike in violence is a new phenomenon for India and the Indians. Journalists have faced other challenges all along like periodic layoffs, inadequate remuneration for their work and, more importantly incessant threats from politicians and armed groups. But the new spike in violence may be linked to the country's terrorism laws that may have created an environment for intolerance of dissenting voices.

So far we have not seen any Saleem Shahzad-style assassination of any journalist in India. The state secret service agencies do not seem to be embroiled in any cloak-and-dagger sting operation against intrusive journalists. At least, there is no credible evidence and

¹³ Reporters Without Borders, India Report 2010. Web. <<http://en.rsf.org/report-india,63.html>>.

¹⁴ Source: Committee to Protect Journalists. <<http://www.cpj.org/killed/asia/india/>>.

¹⁵ 'Press freedom index ranks India down at 122', International Business Times, 21 Oct 2010. Web <<http://www.ibtimes.com/articles/74378/20101021/press-freedom-index-reporters-without-borders-india-rank-north-korea-europe.htm>>.

no finger-pointing yet. The police and security forces in India, on the other hand, target journalists on a regular basis when they report from troubled states, where insurgencies or insurgency-like situations prevail.

In Uttar Pradesh, Karnataka and Andhra Pradesh too there has been a spurt in police violence against journalists¹⁶. Last February saw at least 13 cases of police brutality against media personnel in different states including Kashmir. Such events have engendered a low-morale among Indian journalists.

Impact on the Media: Sedition Laws

India inherited a range of legal codes from its former British colonial rulers. Before the latest spate of anti-terrorism laws, it too had sedition and official secrets laws dating back to the nineteenth century to suppress dissent, along with many other countries. And it appears that it continues to use them in the present terrorism-bedeveled environment. The International Federation of Journalists (IFJ) noted that victims of the sedition laws (Section 124) are mostly journalists, intellectuals, writers and human rights activists. As a consequence, journalists are coping with both the increase and severity of laws on national security. Some media has supported these laws. For instance, the leading Indian English-language newspapers called for tough anti-terror laws following the 2008 Mumbai terrorist attack.¹⁷ However, unlike Pakistan, Indian courts and judges are known for their independence and robust judicial activism; Indian human rights campaigners and their international counterparts are too keeping an eye on the threats to the freedom of expression in India. Rights campaigners have also been weighing in on the side of journalists.

Impacts on Media: Counter-terrorism Laws

India's counter-terrorism legislation has increased over the years in response to various events. Following the assassination of Prime Minister Indira Gandhi in 1985, India passed the Terrorism and Disruptive Activities (Prevention) Act (TADA). This law gave the government immense power to punish those whom it labeled as terrorists. It empowered judges to hold terrorism-linked cases in camera (that is, without the presence of media). Significantly, those accused of terrorism were often presumed guilty until their innocence was established. The law enabled the state to arrest any suspected individual and hold him or her without bail. This legislation was clearly draconian in nature and it expired in 1995. Following intense public outrage the parliament did not renew it. Under TADA tens of thousands of politically motivated detentions, torture and other human rights violations were committed against Muslims, Sikhs, Dalits, trade union activities and political adversaries in the 1980s and 90s.

India embarked on another major anti-terrorism path following the terrorist attack on the Indian parliament on 13 December 2001. The Prevention of Terrorism Act (POTA) was enacted and it was a "return to widespread and systematic curtailment of civil liberties".¹⁸ This legislation made room for the detention of suspects up to three months without a charge.

The Mumbai Attack and Its Aftermath

The November 2008 terrorist attack in Mumbai resulted in the death of 200 people and it left nearly 300 injured. This attack prompted wide-ranging amendments to the anti-terrorism law, including amendments to the Unlawful Activities (Prevention) Act of 1967 and the establishment of a National Investigation Agency (NIA) under the National Investigation Agency Act 2008. These changes have attracted international concern for the human rights situation in India. New amendments include a sweeping and overly broad definition of terrorism. Also, there is no clear and strict definition of what constitutes "membership" of a

¹⁶ 'A "disturbing" spate of police violence against journalists', Reporters Without Borders, 26 Feb 2010.

¹⁷ 'India call for tough terror laws', BBC News, 15 Sept 2008. Web <<http://news.bbc.co.uk/2/hi/7615941.stm>>.

¹⁸ Asian center for Progress of People, country profile India. Web <<http://www.acpp.org/uappeals/cprofile/india.html>>.

terrorist group or organisation. The new legislation on the National Investigation Agency empowers the courts to bar the public from the court hearings. The minimum period of detention for terror suspects has been extended to 30 days and the maximum period of detention for such persons to 180 days from 90 days – these exceed international standards.¹⁹

Critics say that sentencing a journalist to imprisonment for his refusal to provide information about a “terrorist” to the authorities is contrary to India’s commitment to freedom.²⁰

Setback for Investigative Journalism

There are apprehensions that the new anti-terrorism laws would lead to more self-censorship when it comes to the coverage of separatist movements; some sensitive issues may completely disappear from the media radar. There are concerns that with the new legislation, journalistic investigative work could become almost impossible in states like Kashmir, Assam or Manipur. – and this is where India’s anti-terrorism laws are having their impact.

India confronts a rather complex terrorist threat from multiple sources – ethnic separatists, nationalists and the disenfranchised.²¹ The threat from a nuclear Pakistan is part of the terrorism fears in India. But like the situation in other democracies, anti-terror laws and their earlier incarnations are diluting the environment for the peoples’ right to know. The media is caught in the crossfire between the terrorists and increasingly powerful governments. Indian rights campaigners are calling for the narrowing down of the definition of terrorism.²²

Cases of Violence against Journalists

The International Journalists Federation recorded multiple cases in recent years where police and security forces used violence against journalists at work.

Seema Vishwavijay Azad, the founder of the Hindi magazine *Dastak Nai Samay Ki* was detained in Uttar Pradesh last year following allegations that she belonged to an outlawed Maoist movement.

Last year, at least six journalists were beaten by members of an elite police unit known as the Greyhounds during pro-separatist demonstrations on the Osmania University Campus in Hyderabad. The victims included Narsinga Rao of Andhra Jyothi TV, who was beaten ruthlessly. The police also attacked and damaged media vehicles.

Again last year, a local reporter for the Kannada TV station was beaten on 13 February by police in Karnataka and was held for several hours.

Pervez Majeed, the magazine *Saharas* correspondent was threatened and beaten up by a senior officer of the central reserve police in Srinagar after telling him he intended to write about the incident of police violence against school children he had just witnessed.

In another case of violence in Kashmir, police opened fire on Aman Farooq, a photographer with the *Great Kashmir* daily newspaper, seriously hurting him in the leg.

The National Human Rights Commission asked the Uttar Pradesh government to pay compensation to Samiuddin Neelu, a journalist with the Hindi Newspaper *Amar Ujala* who was kidnapped by police officials after writing about police corruption.

Laxman Choudhry, a reporter for the daily *Sambad* in Orissa was arrested in September 2009 on charges of “waging war against the state”. He faces charges of sedition.

¹⁹ Source: National Investigation Agency

<http://www.nia.gov.in/acts/The_National_Investigation_Agency_Act_2008.pdf>.

²⁰ Sukumar Mulathidharan, *Free Speech and Its Perils: Ninth IFJ Press Freedom Report for South Asia*, 8 May 2011.

²¹ U.S Department of State, *Country Reports on Terrorism 2009*.

²² 'New Anti-Terror Laws Draconian, Says Activists', Inter Press Service, 19 Dec 2008. Web <<http://ipsnews.net/news.asp?idnews=45179>>.

In 2008, the Commissioner of Police in Ahmedabad in the Western state of Gujarat, brought charges of sedition and criminal conspiracy against two journalists and India's largest English-language newspaper, the *Times of India*.

Lenin Kumar, the editor of quarterly magazine *Nishan* was arrested in December 2008 in Orissa after his book *Rivers of blood in the name of religion* was published. The book describes in detail the persecution and marginalisation that the state's Dalit and Adivasi Christians face.

There have been other arrests in recent years under the Official Secret Acts, hate speech regulations, defamation and contempt of court laws which Sukumar Murlidharan of the IFJ has comprehensively documented. It appears that journalists working in areas that are rocked by endemic conflict are under constant duress.

The media has a legitimate and valuable role in the body politic enhancing openness and democratic political processes. The question is at which point can speech be restricted, and on what basis, and who decides. People in India who have enjoyed free and open media would well remember the important role that media freedom played in disseminating information in such a huge and diverse society. And investigative journalism, in which India has also been excelling, helps unmask the real face of terrorism. Media scholars would argue that a free media in fact could help counter the agenda and objectives of terrorists to roll back human rights and stifle freedom of expression.

The world's largest democracy would be ill-served if its counter-terrorism legislation were to roll back decades of progress in media freedom and openness. India needs, as ever, multiple narratives and perspectives on vital issues, including issues of national security. A responsible and free media that India is indeed fortunate to have is an important asset ready to be deployed to defeat terrorism. The complexity and dimension of the threats that India faces are obvious. Terrorism presents a huge challenge to Indian leaders; but India is a democracy and must strike a balance between national security concerns and human rights. The abuses against journalists must be stopped. Indian judges have been the ally of courageous reporters during difficult times for Indian journalism. The courts in India can perform the balancing act once again.

SITUATION REPORT: SRI LANKA*

On 19 May 2009 Sri Lanka became the first country in the world – since the 9/11 attacks – to defeat a ruthless terrorist group, the Liberation Tigers of Tamil Eelam (LTTE), which had been banned in most western countries as well as in India. Though many international commentators have described this victory as a watershed in the global fight against terror, the Sri Lanka government has faced a barrage of criticisms from human rights organisations and media freedom groups around the world, both before and after the defeat of the LTTE. These groups charge that media freedoms in the country have suffered and continue to suffer, as part of this war against terror.

The war against the LTTE effectively started in July 1983 when a roadside bomb killed 13 soldiers in the Tamil stronghold of Jaffna. Yet, Sri Lanka has been under a state of emergency almost continuously since 1971, when a rebellion of rural Sinhalese youth under the banner of the Janatha Vimukthi Peramuna (JVP) tried to topple a democratically elected government in April 1971.

The Public Security Ordinance 1947 – introduced during British rule and still in force – empowers the Executive, namely the President, to declare a state of emergency and enforce necessary emergency regulations in the interest of public security. The emergency laws grant state authorities sweeping powers of detention and permit the holding people in secret locations.

Two Emergency Regulations, which were introduced during the war against the LTTE include the "Emergency (Miscellaneous Provisions and Powers) Regulations, August 2005" and the "Emergency Regulations (Prevention and Prohibition of Terrorism and Specified Terrorist

Activities) No.7 of 2006". The New York-based Human Rights Watch (HRW)²³ says these regulations grant security forces wide-ranging powers of arrest and detention, which unnecessarily restrict freedom of movement, allow for criminalization of a wide range of peaceful activities protected under the Sri Lankan constitution and international law, and introduce wide immunity clauses for government officials and security forces, exempting them from prosecution.

The Prevention of Terrorism Act (PTA) was introduced as a temporary law in 1979, and made permanent in 1981. The act allows the suspension of certain rights of criminal procedure, including the right of individuals to be presumed innocent, as a means of preventing terrorism and other unlawful activities. Under the act, people can be arrested without charge and detained for up to 18 months while the police investigate the possibility of their involvement in illegal activity. The act also allows for indefinite detention on order of a magistrate pending trial.²⁴

Impact on the media

While many countries have enacted anti-terrorism laws in response to the threat of terrorism, worries that such laws may be used to muzzle the media have become a reality in Sri Lanka, according to human rights groups. They argue that laws are being used to target dissident voices of journalists, aid workers, and human rights activists.

The PTA in clause 14.2(a) says that "no person shall, without the approval in writing of a competent authority, print or publish in any newspaper any matter relating to – (i) the commission of any act which constitute an offense under this Act or the investigation of any such offence; or (ii) incitement to violence, or which is likely to cause religious, racial or communal disharmony or feeling of ill-will or hostility between different communities or racial or religious groups".²⁵

The International Commission of Jurists (ICJ) observed in a report in 2009,²⁶ that vague and sweeping powers, such as those contained in the PTA and the Emergency Regulations 2006, undermine legitimate political dissent and media discussion. The PTA criminalises as a terrorist activity any speech that can be construed as intending to "cause communal disharmony or feelings of ill-will or hostility" without requiring that the speech be reasonably expected to incite or result in violence or acts of terrorism. Mandatory minimum sentences of five years are imposed for each separate instance of speech leading to conviction on these grounds. It is evident that in a bitter civil conflict as has occurred in Sri Lanka, many forms of speech can result in feelings of ill-will.

Contrary to Sri Lankan law of evidence, the PTA also allows confessions given under police custody to be admitted into evidence, and shifts the burden to the accused to prove that the confession was given involuntarily, which is an extremely difficult burden to meet without corroborating evidence, the ICJ argues.

The ICJ has expressed concern that Sri Lanka's emergency laws are so broad and vague – that they leave people uncertain whether their acts might be considered criminal. This creates a climate of fear and uncertainty for citizens in their relations with each other and the Government, and violates the fundamental principle of legality.

The PTA also grants extraordinary powers to the Minister of Defence to order the

* The Sri Lanka situation report was compiled by Dr Kalinga Seneviratne

²³ Refer: Asian Center for the Progress of Peoples <<http://www.acpp.org/jpc/fyi/FYI09-01.htm>>.

²⁴ Amnesty International, *Sri Lanka: Forgotten Prisoners: Sri Lanka Uses Anti-Terrorism Laws to Detain Thousands* (ASA 37/001/2011). Amnesty International, 2011.

²⁵ Parliament of the Democratic Socialist Republic of Sri Lanka, *Prevention of Terrorism (Temporary Provisions) Act No. 48 of 1979*. Available at <http://www.satp.org/satporgtp/countries/shrilanka/document/actsandordinance/prevention_of_terrorism.htm>.

²⁶ International Commission of Jurists, *Trial Observation Report Regarding Proceeding Before the High Court of Colombo, Sri Lanka, Brought against Mr. J.S. Tissainayagam*. 11 Sep 2009. <http://www.icj.org/IMG/ICJ_Tissa_Trial_Observation_Report_11_Sept_09.pdf>.

detention of an individual suspect for investigation or as a preventive measure. The minister can determine not only the place and conditions of detention, but also impose continued restrictions or prohibitions on a person's basic freedoms, including freedom of expression, association and movement, even after he or she is released from official custody. Moreover the press cannot write about a case without ministerial permission.²⁷

The PTA was dormant for many years, under the terms of the Cessation of Hostilities Agreement between the Government of Sri Lanka and the LTTE signed in February 2002. But, it was revoked by the government in December 2006 following a suspected suicide bombing by the LTTE targeting Defence Secretary Gothabaya Rajapakse. The new regulation also prohibited any contacts with terrorist groups, and violators faced a 20-year jail term. The HRW accused Sri Lanka of using tough anti-terror laws to suppress democratic dissent and journalists who expose human rights abuses. They also said it was used to stop journalists questioning the government's handling of the war against the LTTE.²⁸

The Sri Lankan NGO, the Centre for Policy Alternatives (CPA) expressed concern on the new regulations pointing out that while there were legitimate security concerns to be addressed, yet, in the interest of national security and the suppression of terrorism, it also curtails legitimate democratic activity, dissent and autonomy of civil society groups. They also pointed out that appeals against the use of this legislation has to be made to an Appeals Tribunal which is under the control of the President and the Secretaries to the Ministry of Defence, Finance, Nation Building and Justice.²⁹

Victims of the Use of Anti-Terror Laws

Since 2005 there have been many cases of detention and jailing of journalists, as well as disappearance and killing of some journalists who were critical of the government. Some of the well-known cases include the following:

On 29 April 2005, the body of Darmaratnam Sivaram, a member of the editorial board of the LTTE-aligned tamilnet.com and a political columnist with the English language newspaper Daily Mirror, was abducted outside a restaurant in Colombo late at night. The next day, his body was found near the parliamentary complex, a high security zone.

In May 2006, as international representatives were meeting in Colombo to attend a UNESCO-sponsored World Press Freedom Day event, a group of unidentified men attacked the office of the Uthayan newspaper in Jaffna and killed two people, Marketing Manager Suresh Kumar and Circulation Department staff member Ranjith Kumar. Media freedom groups such as the Free Media Movement (FMM) accused the army for the attack, while the government accused the LTTE of staging a propaganda stunt to discredit the Sri Lanka government in the eyes of international delegates attending the UNESCO event in Colombo.

Munusamy Parameshawary, a 24-year-old Tamil journalist working for the Sinhalese newspaper "Mawbima" ("Motherland") was arrested on 23 November 2006 under the anti-terror laws accused of having links with an LTTE member who has carried out a suicide bombing in Colombo. After being held in prison with other terror suspects for four months, she was ordered to be released by the Supreme Court after the Attorney-General informed them that there was no evidence of any links with terrorism. Parameshawary told the Sunday Leader after her release from jail that "the Terrorism Investigations Department is a very frightening place. I did not know whether it was day or night. We were cut off from the whole world. There were women guards too. We were interrogated, but I was never beaten or physically abused. During the first few days of interrogation they were very

²⁷ *Sri Lanka: Forgotten Prisoners.*

²⁸ 'Sri Lanka: Lanka uses anti-terror laws to crush media says rights group', The Daily Star (Bangladesh), 13 April 2007.

²⁹ 'Struggle for Survival', report by the International Press Freedom and Freedom of Expression Mission to Sri Lanka by the International Federation of Journalists, January 2007.

- frightful, they shouted too”³⁰.
- In February 2007, Dushantha Basnayake, the financial director of the Mawbima newspaper, was arrested under anti-terror laws. The newspaper has a reputation for criticising the government and exposing human rights violations. It is owned by opposition politician Mangala Samaraweera, who was the campaign manager for President Rajapakse’s successful election campaign in 2005, with whom he has since fallen out.
- On 6 March 2008, the police Terrorist Investigation Division (TID) arrested Vettivel Jasikaran on suspicion of “terrorism-related activities”, and his wife Valarmathi Jasikaran as an accessory, under emergency regulations. Vettivel Jasikaran is a writer, publisher and manager of the news website Outreach Sri Lanka. On 8 June 2008, Vettivel and Valarmathi Jasikaran filed a fundamental rights case with the Supreme Court, stating that their arrest and detention were illegal and that Vettivel had been tortured in TID custody. The Ministry of Defence extended their detention under emergency regulations on 30 June 2008. After nearly six months’ detention without charge, Vettivel Jasikaran was indicted on 27 August 2008 for “inciting communal disharmony” by printing, publishing and distributing the magazine North Eastern Monthly. Valarmathi was charged with aiding and abetting her husband. On 26 October 2009, almost a year after their trial began, the Supreme Court acquitted them of all charges.³¹
- On 7 March 2008, Jayaprakash Tissainayagam, a Tamil journalist working for the English language Sunday Times and the North Eastern Monthly, was arrested by the TID and detained for five months before charges were made under the PTA and Emergency Regulations of 2006. He was accused of intending to incite acts of violence through communal disharmony. The accusations were attributed to two articles he wrote for the North Eastern Monthly in 2006 criticising the impact of army operations and focusing on the plight of civilians caught in the crossfire. He was subsequently given a 20-year jail sentence, but after a little more than a year in jail, President Rajapakse pardoned him and was released on World Press Freedom Day in May 2010.
- On 8 January 2009, Lasantha Wickrematunga, a controversial editor of the anti-establishment Sunday Leader, was gunned down in broad daylight by two gunmen on motorcycles, while he was driving to work. A Sinhalese journalist, in 2000 he was awarded an Integrity Award by Transparency International for his work exposing corruption in Sri Lankan politics. Wickrematunge expected to be assassinated and went so far as to write an editorial for publication after his death. It appeared in the *Sunday Leader* on 11 January 2009, three days after he had been murdered. In May 2009, UNESCO awarded him the UNESCO Press Freedom Prize posthumously. Until today no one has been charged for his murder.
- In June 2009, a month after the crushing of the LTTE, media activist and secretary of the Sri Lankan Working Journalists Association, Poddala Jayantha, a Sinhalese, was abducted, given a bone-shattering beating and dumped at a swamp near the capital. The New York-based Committee to Protect Journalists made a statement following this attack pointing out that the latest attack was a “chilling reminder” that journalists remain under attack in Sri Lanka even after the government’s battle with Tamil separatists was over.³²
- On 29 January 2010, officers from the Criminal Investigation Department (CID) broke into the premises of the Sinhalese-language Lanka Irida newspaper and arrested its Chief Editor, Chandana Sirimalwatte. They reportedly forced him to hand over files that contain sensitive information. The newspaper is allied with the left-wing JVP political party which campaigned for the opposition candidate, former army commander Sarath Fonseka in the presidential elections. CID officers raided the Lanka Irida office for a second time on the morning of 30 January after sealing off the premises to visitors. Lanka Irida was previously

³⁰ 'Parameshawary – freedom at last', Sunday Leader, 25 March 2007. Web.
<<http://www.thesundayleader.lk/archive/20070325/spotlight.htm>>.

³¹ *Sri Lanka: Forgotten Prisoners*.

³² 'Sri Lanka's other war show no signs of ending', report by Amal Jayasinghe of AFP, 5 June 2009.

raided by police in September and October 2009 after it had published stories critical of the Rajapaksa family. Sirimalwatte was detained in CID custody for three weeks before a Colombo court ordered his release, citing lack of evidence of wrongdoing.

Prageeth Ekneligoda, a cartoonist with the Lanka e-news on line news portal, which backed Sarath Fonseka's presidential campaign, disappeared a few days after the elections. His wife has written to the president, even petitioned the Sri Lanka Human Rights Commission and appealed to the UN secretary general Ban Ki-Moon to find her husband, with no results so far.

In April 2011, Shantha Wijesuriya, a Sinhalese journalist with Lanka e-news, was detained under the anti-terror laws for wrongfully reporting on 19 April that a Colombo court had ignored a directive from the attorney-general's office when it released two police officers accused of murder, even though the news portal had published a correction and apology three days after the first posting. The website has been blocked on the order of the courts until his trial is finished.

According to unofficial data, 14 media professionals have vanished since 2006. No one has been charged for their disappearances. Many journalists have also fled the country after receiving death threats numbering at least 55 since 2009 according to Reporters Without Borders.³³

Lanka e-news editor Sandaruwan Senadheera fled to Britain in March 2010 after receiving death threats. An arson attack destroyed the website's premises in Colombo in January this year. Set up in 2005, the website incurred the government's wrath during the 2010 presidential campaign when it backed the opposition candidate Sarath Fonseka.

Lanka News Web is another news portal that has come under the government's spotlight. Sri Lanka Telecom, the country's main Internet service provider, has been blocking the online newspaper's access since July 2009. In an interview with Reporters Without Borders,³⁴ its editor Chandima Withanaarchchi, a Sinhalese, said that the news portal was started in March 2009 by Sri Lankan journalists living in exile following the murder of Lasantha Wickrematunga. "[The] Freedom of expression was totally suppressed and everyone was censoring themselves. Our intention was to eliminate these self-imposed restrictions and minimize the fear that had engulfed our society", he explained. He said that from the very outset, Lanka News Web has maintained an anti-war stance, focusing mainly on human rights abuses, corruption and the malpractices of government officials. Since there was no other source of bold, fearless reporting, their website has become very popular in a short period of time, and they were banned in Sri Lanka in July 2009. Yet he claims the site gets about three to four million hits a month from within Sri Lanka. "Since we are operating outside of Sri Lanka, we can report such incidents without fear. That is the root cause for the harassment we are currently facing," argues Withanaarchchi.

During the war, as AFP's Colombo correspondent Amal Jayasinghe³⁵ recalls, the island's defence ministry had offered a stark choice to the press – support the war effort or be labeled a traitor. Many reporters did not report freely on the war due to the fear of reprisals, since a number of media workers were killed between 2006 and 2010 and many were intimidated. The government banned independent reporters from entering the war zone and in 2009 many international aid workers were asked to leave the area. Colombo's journalists who had information from aid workers working in LTTE-held areas now had to depend purely on information from the government and LTTE.

A year after the war was over, the government lifted parts of the country's tough emergency laws in May 2010. These included lifting curbs on meetings and on the distribution of certain literature. In announcing the measures, the government said that about half of more

³³ 'Authorities Continue Drive to Stamp Out Pro-Opposition Media', Reporters Without Borders, 29 April 2011. Web <<http://en.rsf.org/sri-lanka-authorities-continue-drive-to-29-04-2011,40136.html>>.

³⁴ 'Independent News Website Blocked for Past Year', Reporters Without Borders, 9 July 2010. Web <<http://en.rsf.org/sri-lanka-independent-news-website-blocked-09-07-2010,37910.html>>

³⁵ Amal Jayasinghe, "Sanitized" reporting of war, AFP wire service, 1 May 2009.

than 70 provisions in place under the state of emergency were to be lifted. The military will no longer have the powers to cordon and search premises. The time a suspect can be held in custody before being produced in court was to be cut from 18 months to 3 months. But the PTA was to remain in force, as well as the right to detain suspects without trial.³⁶

These measures coincided with the government's pardoning of Jayaprakash Tissanayagam who had been sentenced to 20 years hard labour on charges including conspiracy and violation of emergency regulations.

In a press statement released on 30 December 2010, Reporters Without Borders welcomed the government's relaxing of emergency regulations and the fall in the number of physical attacks, threats and cases of imprisonment of journalists. But it pointed out that the authorities are still blocking the return of real editorial freedom. "We hope the authorities will create the conditions for a lasting improvement in press freedom in 2011" the statement said.³⁷ "This must include solving the murder of The Sunday Leader's well-known editor, Lasantha Wickrematunge, nearly two years ago, and political cartoonist Prageet Ekneligoda's disappearance nearly a year ago".

Media Freedom and the Global Propaganda War

In March 2011, President Rajapakse said during an interview with a French newspaper *Esterprinter* that "funds are not coming in for the NGOs and their activists if they are not critical against Sri Lanka. Therefore to obtain funds they claim that Sri Lanka is violating human rights".

This is an issue that is the crux of the argument between greater media freedom after the military battle against LTTE was won, and the need for the government to maintain the hard-fought peaceful environment in the country. Though the government has won the military battle in the field, they have not yet won the propaganda battle with the LTTE Tamil diaspora supporters overseas, who have the support of many western media organisations and human rights NGOs.

There is a strong feeling within the government and among a significant majority of people in the country that they are fighting an international conspiracy to destabilise the country, because the Rajapakse government has not been subservient to western powers and is developing an independent foreign policy. Many Sri Lankans see the local human rights NGOs and their international backers in this light. Thus, a majority of the voting population has backed the Rajapakse regime both at the presidential elections and the parliamentary elections in 2010. Government won landslide victories at both polls.

Government sources have released figures following these elections that show the large amounts of money that the NGOs critical of the Rajapakse regime have been receiving from overseas. Thus, they have been questioning the transparency of these NGOs, which are themselves calling for the government to be transparent. This call has been supported by a number of independent media groups in the country such as The Island newspaper, a member of the Asian News Network.

The Island reported in March this year in an article under the heading "Foreign funds galore for three NGOs"³⁸ that three of the NGOs which have been very critical of the government on human rights and media freedoms have received over Rs 600 million (about USD 6 million) over three years, mainly from Norway (who brokered a peace agreement between the LTTE and the government in 2002, but since been accused by supporters of President Rajapakse of being too pro-LTTE). The report revealed that foreign donors from the West were still pouring money into these NGOs – the Centre for Policy Alternatives (CPA),

³⁶ 'Sri Lanka relaxes war-time emergency laws', BBC News, 5 May 2010. Web <<http://news.bbc.co.uk/2/hi/8661394.stm>>.

³⁷ 'Less anti-media violence in 2010 but more obstruction and self-censorship', Reporters Without Borders, 30 Dec 2010. Web <<http://en.rsf.org/sri-lanka-less-anti-media-violence-in-2010-30-12-2010.39197.html>>.

³⁸ The Island, 4 Mar 2011. Web <http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=19831>.

National Peace Council (NPC) and Transparency International Sri Lanka. The NPC was one of the key promoters of the campaign by opposition leader Ranil Wickremasinghe for the presidency in 2005 and they have often tried to cover up LTTE terror campaigns in Colombo arguing that such suicide bombings as indicating “growing absence of confidence in the integrity of the government institutions”. They have also branded those who opposed terrorism, such as Buddhist monks, as Sinhalese extremists.³⁹

The Free Media Movement (FMM) and its convenor Sunanda Deshapriya who was a constant irritant for the government during the final years of the war against the LTTE, was accused in March 2009 of misappropriating Rs 3 million of foreign donor money earmarked for the “Safety Fund”, which was set up in 2007 to safeguard journalists under threat. He was forced to resign from the position after a public audit of the organisation’s accounts. He has fled the country and is believed to be based in Europe and involved in anti-government campaigning, such as with the website called Journalists for Democracy in Sri Lanka (JDS), which is operated from Germany and is often used as a source by western media. The website carries no names, addresses or phone numbers for contact.⁴⁰

Sri Lanka has yet to win the propaganda battle with its foes overseas. Recent attempts by the Office of the UN Secretary-General and the head of the UN Human Rights Commission to charge the Sri Lankan government of war crimes is indicative of this.

The founder of the FMM and now a media advisor to President Rajapakse, Lucien Rajakarunayake noted in a recent opinion published in the state-owned Daily News⁴¹ that it would be good if journalists in self-imposed exile take some pains to be truthful themselves, and also impress on the media institutions to which they send such material to be conscious of the need for verification. He was referring to the recent screening on Britain’s Channel 4 TV network of video footage supposedly supplied by JDS of alleged war crimes by Sri Lankan soldiers during the final push against LTTE in 2009. He argued that the Channel 4 exercise gives a very interesting example of how anti-government forces overseas could exploit the bias of western media organisations against developing countries to create a case for a human rights inquiry by the United Nations.

Rajakarunayake pointed out that the Channel 4 footage did not indicate a date, time or place where it was recorded, yet the presenters were making a case for a human rights violation inquiry against the Sri Lankan government. He noted what he calls an “ugly pattern of distortion” in the way Channel 4 went about attacking the Sri Lankan government:

You get one side of the pro-LTTE operators abroad, especially in the West, to produce the fake and highly sinister material. You then get a western media outlet that is known for lack of attention to veracity and an open agenda against Sri Lanka and pro-LTTE to air it, you get a so-called independent news organization such as the BBC to spread the story wider, and then comes HRW or any such others, pontificating how the unverified news item in question, underscores the need for an international commission of inquiry into possible war crimes committed (of course by both sides, with one side not available in Sri Lanka anymore), during the armed conflict in Sri Lanka.⁴²

Rajakarunayake’s observation clearly spells out the dilemma facing Sri Lanka today, where the government is trying to rebuild a country and an economy devastated by 30 years of civil war, while having to fight a well-funded international propaganda campaign against the

³⁹ Investigate the activities of NGOs who support separatists', S. Akurugoda (Ministry of Defence and Urban Development, Sri Lanka, 14 Mar 2011). Web <http://www.defence.lk/new.asp?fname=20110314_02>.

⁴⁰ See Journalists for Democracy in Sri Lanka, <<http://www.jdslanka.org/>>.

⁴¹ 'The east path of falsehood against Sri Lanka', Lucien Karunayake, (Ministry of Defence and Urban Development, Sri Lanka, 30 Dec 2010) Web. <http://www.defence.lk/PrintPage.asp?fname=20090831_06>

⁴² The Channel 4 documentary has since been broadcast on Australia’s ABC-TV channel, which triggered demonstrations against ABC bias by Sri Lankan migrant groups in Sydney and Melbourne.

country by pro-LTTE forces overseas. Many people in Sri Lanka will openly tell you that today they feel free to walk in the streets, when earlier during the LTTE's reign of terror in the country, a mother and a father will not travel to work in the same bus, because if a suicide bomber strikes, one of them should be left to look after the children. Safety in the streets and economic growth are of paramount importance to most Sri Lankans today and media freedom is seen as less of a priority, or even a luxury in the face of formidable economic challenges.

SITUATION REPORT: INDONESIA

Home to more than 230 million people, Indonesia is the country with the largest Muslim population in the world. It lies on the periphery of Islamic civilisation whose core is still the Middle East. The brand of Islam, practiced by 90 per cent of Indonesians, is often perceived as more moderate and open because of its co-existence with Javanese spiritualism, and its interactive cohabitation here with other religions such as Buddhism and Hinduism. In recent years, however – a fringe of extremists have emerged in Indonesia, who are inspired by a purist and rigid doctrine such as Wahhabism and – have tapped into the so-called transnational jihadist narrative. This has contributed to a series of terrorist attacks in Indonesia since 9/11.

The most serious attack was the October 2002 Bali bombing which claimed 202 lives – among those perished were 88 Australians. Various members of Jemaah Islamiyah have been convicted for their alleged involvement in what has been described as the biggest terrorist attack in the history of Indonesia.⁴³ The second terrorist attack occurred on 5 August 2003 when a suicide bomber struck at the JW Marriot Hotel in South Jakarta, killing 12 people and injuring 150. More bombings followed in 2004 and 2006.

As witnessed elsewhere, the terrorist attacks prompted the enactment of a host of anti-terrorism laws to deal with the new contingency. In particular, after the Bali bombing, Indonesia experienced growing pressure from the West, particularly Australia and the US to tighten security and go after the perpetrators. This is the backdrop to the enactment of anti-terrorism laws in Indonesia. The transformed political environment after the ouster of Suharto in 1998, also encouraged changes of the media landscape in the country, and the media too went through a transition.⁴⁴ Today the media seems more focused on human rights, politics and state of the nation. As a consequence of its increasing assertion against the impact of new anti-terrorism laws, it finds itself engaged in a struggle with the state's security apparatus. Indonesia is also regarded as one of the 13 most dangerous countries for journalists to operate.⁴⁵

The counter-terrorism laws empower the state to detain and arrest people without due process,⁴⁶ giving rise to concern for potential human rights violations by the state. The Indonesian Anti-Terrorism Law (ATL) was drafted in response to the 11 September 2001 terrorist attacks in the United States. But it was the Bali bombing that acted as a spur towards its adoption. It was signed into law by Indonesia's then President Megawati Soekarnoputri on 18 October 2002 six days after the Bali bombings rocked the country.⁴⁷ Like anti-terrorism laws in India and elsewhere, the ATL gives a rather broad definition of terrorist acts, and some of its articles are opened to wide interpretations giving rise to possible abuses. It was used to investigate and convict those involved in the bombing of Marriott Hotel in 2003, the Australian

⁴³ 'Timeline: Bali bomb trials', BBC News, 8 Nov 2008. Web <<http://news.bbc.co.uk/2/hi/asia-pacific/3126241.stm>>.

⁴⁴ Refer: Committee to Protect Journalists (CPJ) 2010 reports on Indonesia – available at <<http://www.cpj.org/asia/indonesia/>>.

⁴⁵ *Ibid.*

⁴⁶ Bivitri Susanti, 'National Security, the Media and Promotion of Rights in Indonesia', *AsiaRights* 4 (2), 2008. (Canberra: Australian National University).

⁴⁷ Simon Butt, *Indonesian Terrorism Law and Criminal Process* (Sydney Law School Research Paper No. 09/30). University of Sydney, 2006.

Embassy in 2004 and the second round of Bali bombings in 2006.

The ATL strengthens the Indonesian criminal codes and makes it much easier to investigate, prosecute and investigate terrorists. Significantly, the law adds to the powers of law enforcement agencies. Police, prosecutors and judges now enjoy powers that no other law gave them in the past. For instance, the ATL allows for the arrest and detention of suspects for longer periods; it also provides room for types of evidences that trials for other offences preclude. A more egregious dimension of the law is that authorities can tap and intercept communications. This is clearly where the interests pertaining to a free media collide with the Indonesian anti-terrorism regime. It is little surprise then that there is a pervasive disquiet among some legal scholars that the ATL is indeed a freely interpretable law and has the potential to take on a coercive role in the same way the anti-subversion law was used by Suharto to stifle opposition during his 31-year rule.

Anti-Terror Laws: A Local Necessity or a Foreign Imposition?

Even without the Internal Security Act disguised in the form of counter-terrorism laws, pro-democracy elements and the citizens would encounter threats from the multi-interpretative terrorism laws. The Indonesian state had been repressive and the use of military power frequent and widespread. A reading of the text of the anti-terrorism law has to take into account the power struggle between competing entities. Any implementation of the law depends on the dominant interest of the state. Indonesian rights campaigners feel that the state is now enjoying special powers, thanks to new anti-terrorism laws, which are used to infiltrate the private lives of individuals, and thereby sharply restricting civil liberties. Also, most Indonesians perceive terrorism not as serious a problem as natural disasters or politics.

The view from the West is different. Western nations regard Indonesian anti-terrorism laws and security policies with perceptible appreciation. Indonesia's efforts to defeat what is seen in the West as the emergence of new terrorist threats, the spread of extremist ideology and the widespread recruitment by militant groups in prisons resonates well with the West. The country's famed programme of reaching out to convicted jihadists and rehabilitating them has been particularly praised.⁴⁸ Indonesia is also cracking down on "precursor" activities that take place before terrorist acts are executed.

The media in Indonesia is not impressed with such accolades. For journalists the realities on the ground have been transformed. In a recent statement, the Indonesian Alliance of Independent Journalists (AIJ) and TV networks association – have pointed out that Indonesian journalists continue to face challenges as the Indonesian Press Council has documented 66 cases of harassment or violence against journalists in the last year.⁴⁹ The AIJ says this included damage to media offices, forced evictions and ban on reporting, lawsuits, intimidation, terror, damage to equipment, demonstrations and mass mobilization against media and journalists, and murder. The most damning of all is the accusation that perpetrators of violence enjoy impunity from legal accountability. The AIJ regards this to be the major factor behind the intimidation of journalists in Indonesia.

As we know, impunity is also a factor for the media's vulnerability in the Philippines and Pakistan. Such impunity is at the very basis of escalating violence against the media. There is no insurance mechanism yet in place for those working for the media in Indonesia. The impunity for the journalists' killers can be read as the state's lack of will to protect journalists. Research from CPJ indicates for instance that of the nine journalists killed in Indonesia since 1996, there has been a 75 per cent rate of impunity.

⁴⁸ 'Indonesia's terror laws to change', Tom Allard, The Age, 5 June 2010. Web <<http://www.theage.com.au/world/indonesia-terror-laws-to-change-20100604-kkxf.html>>.

⁴⁹ 'SEAPA Alert: Journalists group to Indonesian Government: Stop impunity killings, provide protection and benefits to media workers', Southeast Asian Press Alliance (SEAPA), 4 May, 2011. Web <<http://www.seapabkk.org/alerts/100440-seapa-alert-journalists-group-to-indonesian-government-stop-impunity-killings-protect-protection-and-benefits-to-media-workers.html>>.

Also, journalists are particularly shocked that Indonesian intelligence officers are being authorised to intercept private communication without the consent of the courts. This is a formidable threat to press freedom because these intelligence officers can then listen to the conversation between journalists and their sources. In simple terms, intelligence officer will have *carte blanche* to spy on journalists. Such laws will erode the rights and obligations of the free press. Likewise, newly proposed intelligence laws, says SEAPA (South East Asian Press Alliance), could arm the intelligence officers with powers to detain people, powers that should rightfully rest with law-enforcing agencies such as police.

The AIJ has monitored other threats against journalists in recent weeks and months – there have been seven cases of dismissals and harsh strictures on reporting, six victimised via legal processes and two cases of censorship. It would appear that Indonesia is also toying with the idea of injecting new life into state secret laws or bring totally new laws in this respect. As we have observed in India and Pakistan, the confluence of secrecy laws, sedition laws and terrorism laws could empower the state in Indonesia to suppress dissenting voices. While Indonesia currently enjoys the reputation as a country that has successfully made the transition to democracy from the 31-year-long rule of former strongman Suharto, the unprecedented deaths of journalists cast serious doubts on the country's ability to move beyond the authoritarian era.⁵⁰

According to the CPJ 2010 report,⁵¹ Indonesia has backslided on press freedom as the state seeks to balance “progressive desires for an industrialised society with the expectations of the country's conservative population”. The following serious cases of violence against journalists occurred in Indonesia in the last two years:

In December 2009, the badly bruised body of Alfrets Mirulewan was found on a secluded beach in Kisar. The editor was writing a report on illegal sale of fuel and had disappeared two days earlier.

Ridwan Salamum, a correspondent for the Sun TV, was stabbed in 2009 while he was covering a bloody feud between local villagers in the Tual area of the Maluka Islands. He was filming when his assailants attacked him right in the middle of fighting.

In 2009 a search team recovered the body of reporter Ardiansyah Matar's from a river in a small town called Merauke, on the southern tip of Papua province. He worked for the local broadcaster Merauke TV and had been missing for some time. He and at least three other reporters had received threatening messages during the hotly contested local elections.

In 2011 Banjir Ambarita, a free lance reporter who frequently wrote for the English-language daily newspaper Jakarta Globe was stabbed. His reports linked the police to a prison sex abuse scandal.⁵²

Like in India, Pakistan and Sri Lanka, these murders remain unresolved. No arrests have been made in Indonesia for any of these three cases. Meanwhile, threats of censorship have emerged as some officials seem to be arguing strongly for restrictions on Internet activity. In another significant development the Constitutional Court has struck down elements of Suharto-era book-banning laws, but it left the government with powers to outlaw books with court approval. This represents the single most potent threat to the freedom of expression.

In December 2009, the Attorney-General's Office banned five books for their political content; 20 more were under evaluation (CPJ 2010 report). Had it not been the spirited intervention from some 82 human rights activists, journalists and academics, most of these would have been banned. Their voices created enough commotion and momentum for the law to be struck down.

⁵⁰ Refer Committee to Protect Journalists (CPJ) 2010 reports on Indonesia – available at <<http://www.cpj.org/asia/indonesia/>>.

⁵¹ *Ibid.*

⁵² 'Papua-Based Reporter Seriously Injured in Stabbing', Reporters Without Borders, 3 March 2011. Web <<http://en.rsf.org/papua-based-reporter-seriously-03-03-2011,39664.html>>.

Anti-terrorism laws in Indonesia have created a climate of fear for the media to operate freely. When the state – is empowered to arrest a person up to six months for investigative purposes on suspicion of plotting terrorism (with terrorism meaning different things to different people), especially in an environment of competing worldviews and politics, it creates opportunities and temptations for the manipulation and distortion of reality. The tension between the state and the media and advocates of human rights will only rise in days ahead. Again, it is excessive that the definition of proof or evidence has been broadened⁵³. Whatever one says, sends, receives, or keeps in electronic or optic forms, including data, record and information that can be seen, read and heard – all of these are part of evidence or proof of terrorism.

The state in Indonesia has amassed an arsenal of anti-terrorism laws; yet, it has taken steps to enhance its ability to counter systemic failures of its law and order machinery. There are obvious weaknesses in its policing and intelligence-gathering systems that have to be addressed first.

SITUATION REPORT: PHILIPPINES

Parts of the Philippines have experienced terrorist activity for a long time. Militant organisations like the Abu Sayyaf Group and Moro Islamic Liberation Front (MILF) are active in the Southern Sulu archipelago and southern-most island of Mindano – areas of the Philippines which are closest to Indonesia. A strong sense of deprivation pervades among the country's Muslims here. Secessionist sentiments go back to the 17th century. Poverty, along with a fragile law and order situation, in a rugged terrain has made this part of the country a haven for extremist activities. The Communist Party of the Philippines (CPT) and its military wing, and also some other groups, operate in these regions as well⁵⁴.

After the events of 9/11 the Philippines too became a focus of international terrorism experts, who now share a growing concern that increasing cooperation among the Abu Sayyaf Group, the MILF and Indonesia's Jemaah Islamiyah could result in terrorist attacks across the world. There is fear that Al Qaeda has penetrated the Philippines' soft underbelly, and the MILF also is at the centre of various disruptive activities.

Since 2004 about 100 attacks by these groups have hit the Philippines – and one of the more serious attacks for instance, a ferry bombing claiming 130 lives, sent shock waves across the country, reinforcing the need for anti-terrorism laws.

Anti-Terror Laws Under Pressure From Overseas

In 2007 then President Gloria Macapagal-Arroyo approved a seemingly tough anti-terrorism law to counter growing terrorist activity. Like Indonesia, the Philippines had been under pressure from the United States and Australia to enact tough anti-terrorism laws. Security officials from both countries have been advising the Philippine government on security measures and millions of dollars' worth of aid had flowed in.

The anti-terrorism law, euphemistically called the Human Security Act (HSA), went into effect in July 2007; it brought fulsome praise from the United States that had long feared that Al-Qaeda training camps in southern Philippines would be used to launch attacks anywhere in the world. As it happened elsewhere, rights campaigners and media practitioners have taken up cudgels against the new legislation. There was a petition in the Philippine Supreme Court urging the judges to declare the law unconstitutional.⁵⁵ The objections against the law have

⁵³ Refer to Submission by IMPARSIAL – the Indonesian Human Rights Monitor – to The South East Asian Hearing of the Eminent Jurists Panel on Terrorism, Counter Terrorism and Human Rights, 24 Feb 2004 – available at <<http://ejp.icj.org/IMG/IMPARSIALSubmission.pdf>>.

⁵⁴ Preeti Bhattacharji, *Terrorism havens: Philippines*, Council on Foreign Relations Report, 1 June 2009. Web <<http://www.cfr.org/philippines/terrorism-havens-philippines/p9365>>.

⁵⁵ 'Guingona militants to file petition against terror law', The Philippines Star, 16 July 2007. Web <<http://www.philstar.com/Article.aspx?articleId=6256>>.

been similar to the ones – in India and Indonesia – that it is overly broad in definition and could be used against various expressions of dissent such as labour strikes and demonstrations. More importantly, the offences targeted by the new law are problematic in serving as the basis for a criminal restriction on the right to freedom of expression.

The HSA – designates terrorism as an act embodying 12 crimes that include murder, kidnapping, arson, piracy and coup and rebellion. It allows suspects to be detained up to three days and their rendition to other countries. On the face of it, a three-day detention period is quite benign when compared to much stringent provisions of the terror-related custody laws in India, Pakistan and Indonesia. The National Union of Journalists in the Philippines (NUJP) has – cited the Justice Secretary as saying that the government could wiretap journalists “if they are suspected of co-mingling with terror suspects.” The NUJP says the secretary’s words were vague and as such it is open to abuse as many of the law’s provisions, especially those that supposedly define what terrorism is, who terrorists are, – are so open-ended that they could be used by the governments to tag anyone as a terrorist.⁵⁶ The government’s point of view is that it needs the legislation to protect the country’s democratic system. President Gloria Macapagal Arroyo has said that “the HAS is about defending our way of life.”⁵⁷

Measures are in place now to reinforce the HSA by removing or watering down the terms of safeguards against its misuse. One probable amendment to the law is aimed at reducing the current massive fine each day a police or military officer keeps a suspect in prison wrongfully.⁵⁸ On the other hand, journalists and media personnel have been “spooked” by the law. The Manila-based Centre for Media Freedom and Responsibility (CMFR) is outraged by the jail terms and fines that the law imposes for divulging information about terrorism cases to the media. The government has the powers to intercept communication, a step that discourages exchange of information and it becomes easier to level accusations against those who transmit information.

What this meant is that authorities can keep detainees in prison and call for spurious prosecution, Human Rights Watch warned.⁵⁹ The United Nations Special Rapporteur on Promotion and Protection of Human Rights has also weighed in on the side of HSA’s critics. There is a lethal and bizarre alliance of local warlords and police and military officers in the Philippines’ rural area and how these laws could be abused by these people are of grave concern.

Challenges Facing the Media

Statistics showed that the media and its practitioners face severe challenges in the Philippines on a daily basis.

With 121 journalists and media workers killed since 1986 in the line of duty,⁶⁰ this country remains a dangerous place for the media practitioners. In November 2009, 29 journalists and two media workers were massacred in Ampatuan, Maguindano. No single event has claimed as many lives of journalists, according to the CPJ. Investigations by various media watchdog organisations show that the slain journalists were not directly targeted, but rather were caught in the midst of a long-standing feud between two rival political clans. These two clans were involved in an intense struggle for influence in the area. The reporters involved in the melee were, as usual, local reporters who were ostensibly following a “hot story”⁶¹.

⁵⁶ 'Philippines casts a wide terror net', Asia Times Online, 18 July 2007. Web <http://www.atimes.com/atimes/Southeast_Asia/IG18Ae02.html>.

⁵⁷ *Ibid.*

⁵⁸ 'Aquino says weak anti-terror laws need to be amended', Interaksyon, 10 Sept 11. Web <<http://interaksyon.tv/article/12795/aquino-govt-says-weak-anti-terror-law-should-be-amended>>.

⁵⁹ Human Rights Watch, *World Report 2010*. Web <<http://www.hrw.org/sites/default/files/reports/wr2010.pdf>>.

⁶⁰ The Centre for Media Freedom and Responsibility, CMFR, 2011.

⁶¹ Refer Lingao, E (2011), Maguindanao Massacre: One year on, PCIJ, 28 Dec 2010 – available from <http://pcij.org/tag/maguindanao-massacre/>

The killings amply demonstrated that covering news in the rural areas of the Philippines is a precarious assignment, as the central government does not wield effective control in these areas. Metropolitan newspapers too have no influence. The local politicians, with police and military officers mostly in tow, call the shots. Politicians funnel their wealth to local strongmen in order to get elected. They also mindlessly use the state's money and resources in order to get re-elected. Exposing this systemic corruption is a dangerous exercise, since impunity is granted to the strongmen who support their paymasters. Journalists who offend these strongmen can be murdered without consequence.⁶²

The killing of journalists goes largely unpunished. The statistics are revealing – just three murder cases involving journalists have been solved to date. The trials for the Ampatuan killings are under way, and the outcome would be closely watched by media organizations and human rights groups.

The Philippine Centre for Investigative Journalism has been keeping tabs on how these trials are progressing. The Paris-based freedom advocacy group Reporters Without Borders has also written an open letter to President Gloria Macapagal-Arroyo raising serious doubts about the integrity of these trials. It has shown concern over the recent move by the Department of Justice to withdraw murder charges against former Autonomous Region Muslim Mindanao (ARMM) governor Zaidy Ampatuan and his cousin Akmand Ampatuan. The two are among the members of the Ampatuan clan that face charges of having murdered 57 people including 32 members of the media. The demands of justice are being eroded by very dangerous political consideration, concludes the letter. Politics, it is clear, has had a large hand in stirring unprecedented violence against journalists in the Philippines.

It is commonplace to characterise the media in the Philippines as the freest in the region. But the price for upholding this freedom has been huge, and the freedom of the press is particularly threatened. The way the society is organised has a lot to do with the continuing violence against journalists. A strong feudal class calls the shots because of their riches and the direct or indirect influence on politics. The local politician is a dreaded figure. For instance, the alleged suspects of certain prominent journalists have been local politicians and policemen loyal to them.⁶³ The killings are largely perceived as punishment for writing critical pieces against government officials in the media. Again, the local journalists who stood up against the corrupt paid the price. The country has fallen dramatically in its ranking in this year's Freedom of Expression Index. Meanwhile, extra-judicial killings of lawyers and judges in recent years are eroding human rights as pointed out by the Philippine Councils for the Defense of Liberties (CODAL).⁶⁴ Rights campaigners claim that more than 30 lawyers and judges have been assassinated. That most of these lawyers were human rights lawyers underscores the dangers for those who choose to stand up for the weak and the vulnerable; it also throws in sharp relief the challenges in the way of fighting terrorism.

In an environment of problematic governance, political cronyism and simmering insurgency, the chances for the misuse of anti-terrorism laws are obvious. Some of the recommendations for making these laws effective have been in place for some years. The following recommendations apply to all four countries under preview of this study. Firstly, The Philippines needs an oversight mechanism. This mechanism can deliver provided the country keeps it autonomous and outside the influence of executive powers. An ombudsman or national human rights commission could be assigned this task. Of course, overseeing law-enforcement agencies and auditing their work in relation to their implementation of the law presents insuperable roadblocks. Secondly, the oversight authority would monitor the attitude and approach to implementation of the counter-terrorism legislation by the security forces. Thirdly, it would report to the legislature on implementation. Fourthly, the toughest of all

⁶² "One dangerous place for reporters, Saturday Globe and Mail, 27 Nov 2009, Canada.

⁶³ Philippines: Freedom of Expression and the Media – Article 19 – available from www.article19.org/pdfs/publications/philippines-baseline-study.pdf

⁶⁴ Refer <http://counsels4liberties.blogspot.com/>

chores is to access all documentation required to execute the above-mentioned responsibility.

In the absence of such an oversight entity, it is the media which continues to monitor the abuse of anti-terrorism laws. For the journalists, there would be little respite from intimidation, or even murder. The latest CPJ report about freedom of expression in the world paints a gloomy picture – Europe has fallen from its pedestal in terms of standards of freedom, the blame for which can squarely be placed – on new counter-terrorism laws and the paranoia that these laws have generated. For struggling democracies like Indonesia, the Philippines and Pakistan, the present is no different from the past – having gotten hardly any relief from sedition laws and secret laws, they have now been slapped with terrorism laws. The media has a job cut out for it.

CONCLUSION

Nations such as Indonesia, the Philippines and Pakistan undergoing political transition cannot afford to allow their governments' free rein to what the CPJ calls a culture of chaos and violence against the media. What has been lacking clearly in developed and developing nations alike is the debate around terrorism laws, where media in fact is the key player. There is a need for a paradigmatic change. Civil liberties for a whole population cannot be stifled to pave the road for chasing down the terrorists.

ABOUT AMIC

The Asian Media Information and Communication Centre (AMIC), has been the premier media research, publication and information center in the Asia-Pacific region over the past four decades. It is a fully independent, non-profit NGO and a registered charity in Singapore with the mission of spearheading the development of media and communication expertise in Asia and the Pacific within a broad framework of economic, social and cultural development.

AMIC was founded in 1971 and was established with seed funding support from the Friedrich-Ebert-Stiftung (FES) of the Federal Republic of Germany. AMIC is the only regional media and communication research organization in the world and it provides opportunities for empowerment of disadvantaged sectors in the communication/media environment in its activities.

It provides its services on media education, research, publications, capacity building and events. As a research centre, it examines critical issues in the media and communication and their implications for development and policy changing. As a resource centre it gathers and disseminates knowledge about communication via publications and other multimedia packages. In addition, with its ability to bring together academic scholars and professional practitioners, journalists, broadcasters, policy makers and citizens across the globe, AMIC has used its exceptional convening capacity to create a platform for participants to share ideas and initiate discussions that contribute to the media development in the region by organizing various high industry profile events, workshops and seminars across the region. It has managed to address the extra-ordinary range of challenges and issues pertaining to the information and communication sector.

However, to better serve its audience AMIC has reformed and repositioned its programme areas thus giving the opportunity to broaden its networks in the region and beyond. The strengthened areas mainly include, the field of media and communication focusing on human rights, democracy, governance, gender empowerment, environmental sustainability and health, aligning its research and other activities with the UN Millennium Development Goals (MDGs).

ABOUT EU CENTRE IN SINGAPORE

Established in 2008, the EU Centre in Singapore is a joint project of the European Union, the National University of Singapore (NUS) and Nanyang Technological University (NTU), and is part of a worldwide network of EU centres and EU institutes. We aim to promote knowledge and understanding of the EU and its impact on Singapore and the region, through activities revolving around outreach, education and research.

As part of our public outreach activities, the Centre organises an ongoing series of lectures, talks, and seminars. The Centre also contributes to education and research on the EU through organising academic conferences and workshops, publishing working papers, background briefs, policy and research briefs.