



## **Burying the truth under the cloak of national security** **Dr. Agnes Callamard, Executive Director, ARTICLE 19**

### **Opinion Piece for the World Association of Newspapers (WAN) campaign on "Press Under Surveillance," launched on the Press Freedom Day, May 3, 2007**

Since 9/11, restrictions on freedom of expression have multiplied all over the world, justified on the grounds of national security. They include, to cite a few: new anti-terror laws, extensive use of official secret acts, censorship of controversial and sensitive materials, the race to re-classify documents to avoid public scrutiny; etc.

There have been repeated attempts to censor the press because it was reporting on the behaviour of soldiers at Abu Ghraib, and Basra, and on the "liberation" of children at Besran school, because it was asking whether Al Jazeera was ever considered by the Bush administration as a legitimate target, because it interviewed alleged "terrorists", etc. These attempts stand as a symbol of what is wrong with restrictions to freedom of expression justified in the name of national security: their constant abuse in order to bury or silence voices that contest the legitimacy and truthfulness of hegemonic discourses too often upheld by fear and the threat of violence.

#### **Anti-terrorist legislation -**

Since 9/11, a range of countries around the world have legislated to toughen up their anti-terror regimes, such as Australia, Morocco, Algeria, Tunisia, Thailand, Malaysia, Philippines, UK, USA, Turkey, Russia, Jordan, Egypt, etc. This recent wave of legislation is threatening freedom of expression on many grounds.

#### ***(i) A definition of terrorism often too broad:***

First, in many countries, a very broad definition of 'terrorism' has been adopted. For instance, **Turkish** draft Law to amend the 1991 "Law to Fight Terrorism" prohibits periodicals from making propaganda of a 'terrorist organisation'. Yet 'terrorist organisation' is very broadly defined, and covers organisations that would not have been encompassed within the 1991 law. In the **Russian Federation**, new amendments to extremism legislation signed into law by President Vladimir Putin on 28 July 2006 introduce a definition of 'extremism' that includes criticism of public officials.

These are extreme examples of what has become a frequent feature of the new anti-terrorist legislation: they extend the coverage of counter-terrorism regulations to an ever-wider range of groups and activity, including forms of protest that ought to be covered under 'ordinary' public order laws. Hence, the UN Human Rights Committee has criticised the **United States** for extending its anti-terror laws to include conduct in the context of political dissent which, while unlawful, cannot seriously be classified as 'terrorist'. As a matter of fact, other regimes,

including **Uzbekistan, China, Nigeria, Jordan, Ethiopia, and Nepal**, to cite just a few, have used anti-terror laws to clamp down on peaceful protestors, political dissidents, or the media<sup>1</sup>.

**(ii) Criminalisation of glorification:**

Another particularly worrisome aspect of the “new” breed of anti-terrorist legislations is that they criminalise the glorification of terrorism, provocation and/or indirect incitement. Such offences are so broadly and vaguely worded that they are likely to result in excessive interferences with freedom of association, expression and the media. This new offence captures all sorts of statements that are perfectly legitimate under international human rights law. While it is right that the Governments must protect their citizens, it must act within the standards set by international human rights law. The right to freedom of expression does not protect incitement to terrorism and violence, provided incitement is clearly intended to *directly* incite violence. In fact, in many circumstances, the new anti-terror laws are criminalising incitement that *might* lead to extremism activity or to the *possibility* of violence<sup>2</sup>.

Yet, it is fundamental to the guarantee of freedom of expression that any restriction for the purpose of national security, including preventing terrorism, is closely linked to preventing *imminent* violence. Restrictions of this sort have historically been abused and courts have sought to promote an appropriate balance between the need to ensure security and the fundamental right to freedom of expression by requiring a close nexus between the speech sought to be sanctioned and the risk of harm to security<sup>3</sup>. This close nexus has been lost in most recently adopted counter-terrorist legislation.

Despite criticism by NGOs and UN human rights bodies of over-use of anti-terror laws, more anti-terror laws are in the pipeline. For example, the **United Kingdom** Home Secretary has announced that a ‘consolidating’ terror bill will be introduced in Parliament in February 2007. As of January 2007, 34 countries had signed the Council of Europe Convention on Terrorism which requires states to criminalize provocation of terrorism that could include indirect incitement, opening the way to the drafting and adoption of new domestic laws. The **United Kingdom**, and **Denmark** have recently criminalised the ‘justification’ or glorification of terrorism, in some form or other, following on the pre-2001 examples of **Spain** and **France**.

**Official Secrecy Act**

In addition to anti-terrorist laws, ARTICLE 19 has noted other forms of restrictions on freedom of expression, or attempted restrictions, justified on the grounds of national security, in the first place the use of **Official Secrets Act**. For instance, the UK Attorney General warned newspapers that they risked Official Secrets Act (OSA) prosecutions if they published the content of an internal memo highlighting what appeared to have been a serious disagreement between Bush and Blair regarding the conduct of the Iraq war and the alleged targeting of Al Jazeera.

The warning amounted to censoring the press at a time and on an issue – the war in Iraq – where transparency and the public right to know should govern the government’s relationships with the press and the public. It also highlighted the grave risks posed by the use of OSA to freedom of expression, free media and the right to access information. Anyone, including the Media, disclosing classified information should benefit from a **public interest defence** whereby, even if

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<sup>1</sup> See ARTICLE 19 website for a number of statements on cases

<sup>2</sup> For a review of some of these laws, please consult ARTICLE 19 website and legal analyses:  
<http://www.article19.org/publications/global-issues/security-agendas.html>

<sup>3</sup> See the Johannesburg Principles: Principles of National Security, Freedom of Expression and Access to Information, 1996. <http://www.article19.org/pdfs/standards/joburgprinciples.pdf>

disclosure of the information would cause harm to a protected interest, no liability should ensue if the benefits of disclosure outweigh the harm. Although civil servants may legitimately be placed under obligations of secrecy, these should be limited by their obligation to serve the overall public interest.

A deliberate attack on al-Jazeera's headquarters in Qatar would constitute a war crime. Disclosing alleged proposals by a head of State to commit a war crime is as clear an example of serving the public interest as it is possible to imagine. No legitimate national security interest is served by keeping this information secret. Alleged criminal proposals cannot be legitimate secrets. Indeed, information such as this should be subject to mandatory disclosure under an access to information law where, again, the overall public interest should trump secrecy exceptions.

### **Balancing freedom of expression and national security:**

In 1995, ARTICLE 19 and the Centre for Applied Legal Studies (CALs) at the University of Witwatersrand, South Africa, jointly convened a meeting of some 36 leading experts from every region of the world to discuss the national security restrictions imposed on freedom of expression. After intensive debate, the group adopted the **Johannesburg Principles**, setting out standards on the extent to which governments may legitimately withhold information from the public and prohibit expression for reasons of national security<sup>4</sup>. Amongst other things, they provide that a restriction is not legitimate unless its purpose and effect is to "protect a country's existence or its territorial integrity against the use or threat of force, or its capacity to respond to the use or threat of force" from either an internal or an external threat. The Johannesburg Principles also identify a number of illegitimate grounds for claiming a national security interest, such as protecting the government from embarrassment or entrenching a particular ideology. These are clearly not national security interests but, at the same time, countries around the world continue to use and abuse these reasons. The key test for restrictions on freedom of expression in the name of national security is set out in Principle 6, which subject to other principles, prohibits restrictions on expression unless:

- the expression is intended to incite imminent violence;
- it is likely to incite such violence; and
- there is a direct and immediate connection between the expression and the likelihood or occurrence of such violence.

At the root of this principle are two central ideas. First, there is a difference between beliefs and actions and, in turn, between *inciting* beliefs and *inciting* actions. It may be noted that this rule applies only in the context of national security.

Principles 7-9 set out a number of specific examples of expression that shall not be considered a threat to national security. These are, by-and-large, uncontroversial, including items such as advocating change of government policy, criticizing the State or government, objecting to military service, transmitting information about a banned organisation, or using minority languages.

### **Silencing the 21<sup>st</sup> century...**

Unfortunately, the beginning of the twentieth century has not only seen the continued abuse of freedom of expression in the name of "national security". It has witnessed its growing abuses, including from within the more established democracies, with the media becoming one of the principal targets.

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<sup>4</sup> ARTICLE 19, the Johannesburg Principles: Principles on National Security, Freedom of Expression, and Access to Information, December 1996

Unduly restricting cherished rights is precisely the wrong response to terrorism. It is to abdicate rather than defend universal values in the face of an attack. It is adding another scar to our common humanity.

History is replete with examples of government efforts to suppress human rights and speech on the grounds that to do so is necessary for society's survival. In retrospect, these efforts almost always appear panicky, disingenuous or dangerous.

The key concept and aspiration that should be driving national and global leadership in the face of global insecurity must be that of human security – it encapsulates national security but does not limit itself to it, and consists of two basic pillars: the *freedom from want* and the *freedom from fear*. A large number of governmental and non-governmental actors have thrown their weight behind this approach, as highlighted by the appointment in 2001 of a panel of high-level experts mandated by the international community to focus on a number of distinct but interrelated issues of human security, including conflict, terrorism, economic insecurities, health care, and universal education.

The Commission's conclusions and report, launched in 2003, proposed a new security framework that centres directly and specifically on people. *Human security complements state security, furthers human development and enhances human rights. It complements state security by being people-centred and addressing insecurities that have not been considered as state security threats. Respecting human rights are at the core of protecting human security.*

The Commission also urged the international community to recognise the role played by the media in providing the life skills that people need to have a voice in public debates, enabling them to actively exercise their rights and fulfil their responsibilities.

Indeed, freedom of the media must be one of the most celebrated freedoms, especially in the face of hegemonic discourses that are upheld by fear and the threat of violence. For, it is not about protecting the voices of the powerful, the voices of the hegemonic or the voices of the consensus; freedom of media is concerned with protecting and defending diversity – interpretation, opinion and view.

By reporting the abuses and breaches committed by all, including those whose purpose is to fight “terror”, by questioning and investigating, by listening and giving us the opportunity to listen to the voices of the “other side”, the media is performing its most essential historical duty and function, an essential component of our common human security. Let's celebrate and fight for it.