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journalists and international law: not “just” a gender issue, but a threat to democracy



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Online harassment of women journalists hinders the free press from operating as it should, which negatively affects the democratic process. Silencing journalists stifles the free flow of information and our ability to exercise our democratic rights; a pluralistic media landscape needs to include women’s voices. Silencing women journalists therefore constitutes an attack on democracy itself. States should address the issue with the gravity it deserves and live up to their international obligations to put in place domestic legal systems capable of responding adequately to these attacks.

The problem

When a 14-year-old girl was raped in Finland, journalist Linda Pelkonen covered the case on the news website Uusi Suomi. In her report, she mentioned that, contrary to regular practice, the police had referred to the suspect’s ethnicity: allegedly a Finnish citizen of immigrant background had been involved. A post smearing Pelkonen appeared on the anti-immigrant MV Lehti website, after which she received a host of rape and death threats. After a reader published Pelkonen’s personal phone number in the website’s comment section, encouraging others to inform the journalist of their discontent, she received threatening text messages from 18 different phone numbers, and a phone call telling her she would be raped. Pelkonen reported the threats to the police, informing them that she was scared. Declining to investigate, the regional prosecutor argued that journalists, due to the public nature of their work, needed “to be able to endure more criticism than others.”

UK think tank Demos estimates that women journalists receive three times as many abusive comments on Twitter as their male counterparts.

Sadly, Pelkonen’s case is hardly an exception. No comprehensive study on the pervasiveness of online harassment of women journalists has been conducted yet, but the data available paint a gloomy picture. UK think tank Demos estimates that women journalists receive three times as many abusive comments on Twitter as their male counterparts. A survey conducted by the International Women’s Media Foundation showed that over 25% of “verbal, written and/or physical intimidation including threats, to family or friends” took place online.

This week, the OSCE Representative on Freedom of the Media organised its second workshop this year on the safety of female journalists online. In addition to discussing issues such as digital security and civil society initiatives like HeartMob, the workshop addressed the international legal framework within which the online harassment of women journalists should be placed.

“Online” harassment

What are we talking about when we say “online” harassment of women journalists? It covers a broad range of actions, including threats of

(sexual) violence, the spreading of falsehoods about a person asserted as facts, the posting of sensitive information online (home address, personal phone number, social security numbers), technological attacks such as falsely shutting down social media accounts, (sexist, racist) insults, and swatting.

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The distinction between the “online” and “offline” world is artificial. To the extent that any separation between these dimensions of our lives could still be made today, any “online” harassment will always have a “real world” effect. That the medium used for the harassment is digital, does not mean that actual fear and anxiety do not follow from it.

This is underlined by UN Human Rights Council Resolution L.13 on the promotion, protection and enjoyment of human rights on the Internet, which affirms that “the same rights that people have offline must also be protected online, in particular freedom of expression”. Similarly, the OSCE Representative on Freedom of the Media issued recommendations in 2015, stating that “online abuse must be dealt with in the broader context of gender discrimination and violence against women to ensure that the same rights that people have offline must be protected online.”

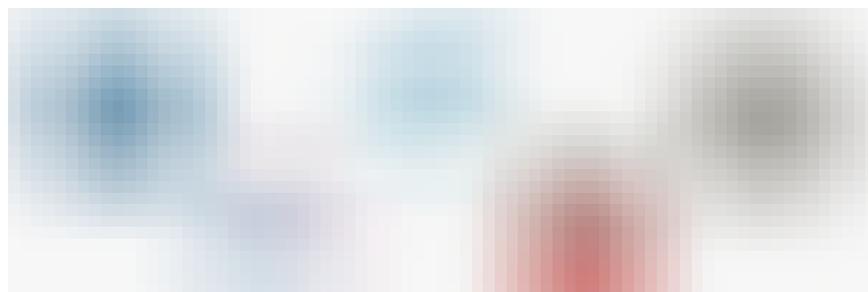


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International legal standards: at the intersection of freedom of expression and gender

The issue of harassment of women journalists needs to be framed from all relevant perspectives: as a freedom of expression issue and as an issue of gender-based violence against women.

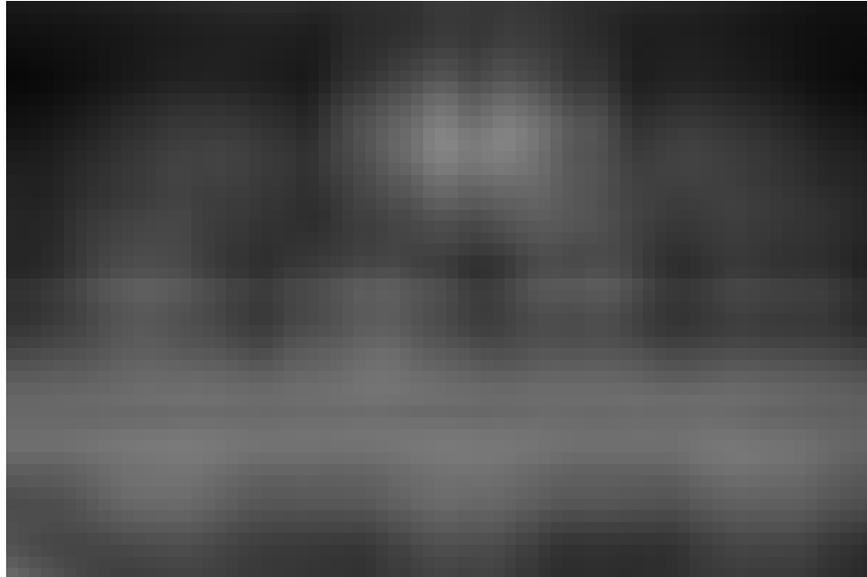
Article 19 of the International Covenant on Civil and Political Rights (ICCPR), which is further elucidated by the UN Human Rights Committee in General Comment 34, makes clear that the right to freedom of expression is a key right that can only be restricted under a limited set of circumstances. It is both an individual right of personal self-fulfilment and a collective right, allowing all members of society to receive information and ideas and inform themselves on matters of public interest. Journalists have a special role to play in this democratic process. As the UN Human Rights Committee, which oversees compliance with the ICCPR, frames it: “A free, uncensored and unhindered press or other media is essential in any society to ensure freedom of opinion and expression ... It constitutes one of the cornerstones of a democratic society.”

For the States that are party to the ICCPR (or one of its regional counterparts, the European Convention on Human Rights, American Convention on Human Rights or African Charter on Human and Peoples’ Rights), this also entails an obligation to ensure a diverse media landscape, both online and offline.

Attacks on women journalists are attacks on democracy itself.

The Convention on the Elimination of Discrimination against Women, often referred to as the “international bill of rights for women” defines discrimination against women and sets up an agenda for national action to end it. The CEDAW Committee, which oversees States’ compliance with the Convention, stated in General Recommendation 19, recently updated by General Recommendation 35, that gender-based violence against women constitutes discrimination against women. The Committee defines it as: “violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.” Online harassment of women journalists falls squarely within this definition, as is explicitly mentioned in the General

Recommendation: “Harmful practices and crimes against women human rights defenders, politicians, activists or journalists are also forms of gender-based violence against women.”



6 February 1998 — Committee on the Elimination of Discrimination Against Women, United Nations Headquarters, New York addressing journalists at a press briefing.

The interlinkage between the right to freedom of expression and women’s right to be free from discrimination is also made explicit: “Women’s right to a life free from gender-based violence is indivisible from and interdependent with other human rights, including the right to ... freedom of expression.”

This is where the crux lies: the online harassment of women journalists hinders the free press from operating as it should, which negatively affects the democratic process. Council of Europe Recommendation CM/Rec(2016)4 of the Committee of Ministers on the protection of journalism and safety of journalists and other media actors sums this up succinctly: “[acts of online harassment of women journalists] which in practice are committed by both State and non-State actors, have a grave chilling effect on freedom of expression ... including on the ability to access information, on the public watchdog role of journalists and other media actors and on open and vigorous public debate, all of which are essential in a democratic society.”

In other words: attacks on women journalists are attacks on democracy itself.

States’ obligations to create conditions for effective investigation, prosecution and protection

When signing on to a human rights treaty, a State takes it upon itself to respect, protect and fulfil its obligations under that treaty. The obligation to respect means that the State must refrain from interfering with or curtailing the enjoyment of the human rights contained in the treaty; the obligation to protect means that the State must protect individuals and groups against human rights abuses; and the obligation to fulfil means that the State must take positive action to facilitate the enjoyment these human rights.

These obligations are applicable to all branches of the State and all public or governmental authorities, at all levels that are in a position to engage the responsibility of the State. They also require the State to ensure that persons are protected from acts by private persons or entities that impair the enjoyment of the relevant human rights.

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Specifically, there is an obligation of the State to put into place a domestic legal system that is capable of responding adequately to threats, ensuring that perpetrators are prosecuted. CEDAW General Recommendation 35 stipulates that “[S]tates parties have to adopt and implement diverse measures to tackle gender-based violence against women committed by non-State actors. They are required to have laws, institutions and a system in place to address such violence.”

Failing to do so constitutes a human rights violation in and of itself: “The failure of a State party to take all appropriate measures to prevent acts of gender-based violence against women when its authorities know or should know of the danger of violence, or a failure to investigate, prosecute and punish, and to provide reparation to victims/survivors of such acts, provides tacit permission or encouragement to acts of

gender-based violence against women. These failures or omissions constitute human rights violations.”

National law and online harassment

What recourse can national legal systems offer to those targeted by online harassment? Generally, there are two possible tracks: civil proceedings or the criminal justice system.

Under the civil law system, the target of harassment can initiate legal action against the attacker, suing them for a civil wrong. In some cases, for example if personal photos have been stolen and published, a copyright claim is also an option. The outcome of civil proceedings can be monetary compensation for the claimant and personal vindication for having won (or even pursued) the case. But bringing a civil case can be time-consuming, expensive and emotionally draining. It can also have the unwanted effect of drawing additional public attention to the case, which can aggravate the harassment.

Adequate follow-up by the authorities is not a given. Many legal systems operate with laws that have not been updated to meet the demands of the digital age.

Remedies in the criminal justice system can be a restraining order against the attacker, a criminal penalty, and in some systems also monetary compensation. Pursuing a case within the criminal justice system entails filing a complaint with the authorities, after which prosecution can follow. In most systems, the prosecutor will have discretionary powers to decide whether or not to pursue a case. As illustrated by the case of Pelkonen described above, adequate follow-up by the authorities is not a given. Many legal systems operate with laws that have not been updated to meet the demands of the digital age. Combined with a lack of understanding of modern technology by both law enforcement and judges, this can lead to a frustrating experience for those wanting to file a complaint about harassment. Journalist Amanda Hess described this aptly in [her account of trying to file a report on death threats she received](#), upon which a police officer asked her “What is Twitter?”. In addition, law enforcement can be too under-

educated and under-resourced to properly follow up and investigate even if they are willing to register a complaint.

When the regional prosecutor failed to follow up, Pelkonen did not give up. She filed a complaint at the prosecutor’s office together with the Union of Journalists in Finland, arguing that failing to prosecute her case would set a dangerous precedent. Finland’s Prosecutor General then decided to take up the case, which resulted in three men being charged in May 2017. The first hearing in the case is scheduled to take place in early 2018.

A threat to democracy itself

While the prosecution in Pelkonen’s case is a positive (interim) outcome, this by no means is an example of what *should* happen in these scenarios. The onus should not be on the targeted person to force the justice system into action: justice should be administered as a rule. States can and should do better in this regard.

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There is often a tendency to brush gender issues aside as “niche”. Given that women make up about half of the world’s population, this is a questionable argument as such, but it also simply isn’t true.

Silencing journalists stifles the free flow of information and our ability to exercise our democratic rights. There is a clear obligation of States to protect these rights and guarantee a pluralistic media landscape—a media landscape that includes women’s voices. Silencing women journalists is an attack on democracy itself and it should be dealt with, with the gravity it deserves.

This post has been cross-posted on [IntLawGrrls](#).

