

## INDEPENDENT HIGH LEVEL PANEL OF LEGAL EXPERTS ON MEDIA FREEDOM

Appointed by Lord Neuberger at the request of the Governments  
of the United Kingdom and Canada



# Advice on Promoting More Effective Investigations into Abuses Against Journalists

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This IBAHRI publication is a report of the High Level Panel of Legal Experts on Media Freedom, authored by Panel Member, Nadim Houry, Executive Director Arab Reform Initiative and human rights lawyer.

**The High Level Panel of Legal Experts on Media Freedom** is an independent body comprised of fifteen internationally renowned lawyers and jurists that was convened in July 2019, by Lord Neuberger of Abbotsbury, at the request of the UK and Canadian governments. The Panel's remit is to provide advice and recommendations to governments, including to the members of the Media Freedom Coalition, with a view to preventing and reversing abuses of media freedom around the world.

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# **Advice on Promoting More Effective Investigations into Abuses against Journalists**

**An International Bar Association Human Rights Institute Report**

**25 November 2020**

*Drafted by: Mr. Nadim Houry*

*With the executive summary and recommendations endorsed by the members of the High Level Panel of Legal Experts on Media Freedom*

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## Endorsements



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David Kaye, former United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression

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## I. Executive summary

1. In recent years, there has been an increase in the number of attacks against journalists, the vast majority of which continue to go unpunished.<sup>1</sup> Out of all cases of journalist killings recorded by the United Nations Educational, Scientific and Cultural Organization (UNESCO) between 2006 and 2018, only 12 per cent were judicially resolved.<sup>2</sup> The Committee to Protect Journalists (CPJ), which independently monitors journalists' murders, found a similarly disturbing pattern, with only 14 per cent of perpetrators successfully prosecuted.<sup>3</sup>
2. Impunity for attacks against journalists is not limited to countries experiencing armed conflict or a general collapse in the rule of law. Since 2017, most killings of journalists have occurred outside conflict zones and have been in connection with reporting on issues of corruption, crime and politics.<sup>4</sup>
3. While impunity for attacks on journalists is a global problem, it is particularly persistent in a select group of countries. According to CPJ's Global Impunity Index (which spotlights countries with the worst records in investigating murders of journalists), 13 countries account for more than 75 per cent of the total unsolved murders in 2019.<sup>5</sup> The group includes a mix of war-affected countries, such as Iraq and Syria, and countries with unaccountable politicians or powerful criminal groups, such as Mexico and the Philippines.
4. This rampant impunity has a chilling effect on press freedom and a detrimental impact on democracy as a whole. It emboldens potential perpetrators to silence journalists and often leads to self-censorship among journalists. This chilling effect is no longer limited to national borders as some governments and extremist armed groups pursue journalists across borders through online attacks and in some cases even death squads. In its latest Press Freedom Index, Reporters Without Borders (RSF) found that the most aggressive online harassment of journalists in Scandinavian countries comes from China and Iran, while Baltic reporters are targeted by Russian trolls.<sup>6</sup> The death squads sent by al-Qaeda to murder Charlie Hebdo satirists in Paris

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1 The term journalist as used in this report refers to all media workers, including newsgatherers, freelance reporters, citizen journalists, fixers, field producers, translators and drivers working alongside journalists.

2 UNESCO, Intensified Attacks, New Defences, Developments in the Fight to Protect Journalists and End Impunity, 2019, p 7 <https://unesdoc.unesco.org/ark:/48223/pf0000371343> accessed 5 November 2020.

3 CPJ, 'Getting away with Murder', 29 October 2019 (analysing journalists' murders that took place between 2008 and 2019) <https://cpj.org/reports/2019/10/getting-away-with-murder-killed-justice.php> accessed 5 November 2020.

4 Recent UNESCO data shows that in 2017 and 2018, more killings (55 per cent in both years) of journalists occurred outside conflict regions. See n 2 above.

5 For a list of the countries, see s III. See n 3 above.

6 RSF, '2020 RSF Index: Europe's journalists face growing dangers' <https://rsf.org/en/2020-rsf-index-europes-journalists-face-growing-dangers> accessed 5 November 2020. The BBC made an unprecedented appeal to the UN to stop Iran from harassing its Persian service staff in London and their families in Iran. Kasra Naji, 'BBC UN Appeal: Stop Iran Harassing Persian Service staff' (BBC, 12 March 2018) [www.bbc.com/news/world-middle-east-43334401#:~:text=The%20BBC%20is%20making%20an,of%20relatives%20and%20travel%20bans](http://www.bbc.com/news/world-middle-east-43334401#:~:text=The%20BBC%20is%20making%20an,of%20relatives%20and%20travel%20bans) accessed 5 November 2020.



or from Saudi Arabia to murder Jamal Khashoggi in Istanbul also make journalists worldwide feel the threat.

5. Threats and attacks against journalists violate a wide range of human rights norms established in both treaty law and customary international law.<sup>7</sup> Under international humanitarian law, journalists are entitled to all the protections afforded to civilians in times of conflict, and an intentional attack against journalists constitutes a war crime.<sup>8</sup> Under international law, States are obligated to investigate attacks on journalists effectively, promptly, thoroughly, independently and impartially, and prosecute those responsible.<sup>9</sup>
6. Over the last decade, and after persistent advocacy from civil society, there has been a growing effort to tackle impunity for attacks on journalists and a number of initiatives – international, regional and national – have been launched:
  - In 2013, the UN General Assembly proclaimed 2 November as the ‘International Day to End Impunity for Crimes against Journalists’ and urged Member States to implement concrete measures to counter impunity.<sup>10</sup> Resolutions and decisions to promote the safety of journalists, which include calls for effective investigations, have been adopted at the UN Security Council, UN General Assembly, UN Human Rights Council (UNHRC) and UNESCO.<sup>11</sup> Many UN initiatives have sought to better coordinate efforts to tackle impunity.
  - Regional organisations, including the African Union, African Commission on Human and Peoples’ Rights (ACHPR), Council of Europe, European Union, Organization for Security and Co-operation in Europe (OSCE), Organization of American States (OAS) and Inter-American Commission on Human Rights (IACHR), have adopted measures – ranging from platforms to monitor threats against journalists to regional trainings of judges and prosecutors – to protect journalists.
  - A number of countries have issued new guidelines or procedures to receive complaints from journalists, while others established special prosecutors for crimes against journalists.

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7 Specifically, attacks on journalists could violate the right to life, the right to liberty and security of person, the right to a fair trial, the right to equality before the law, the right to recognition before the law, and rights to privacy, family and home. Attacks against journalists may also violate fundamental prohibitions against torture, cruel, inhuman or degrading treatment, or punishment and enforced disappearance. In addition to constituting human rights violations, certain conduct can amount to international crimes, including killing, torture and cruel, inhuman or degrading treatment, and enforced disappearance. For a fuller discussion, see s IV.

8 Art 79 of Additional Protocol I to the Geneva Conventions states that ‘[j]ournalists engaged in dangerous professional missions in areas of armed conflict shall be considered as civilians within the meaning of Article 50, paragraph 1’.

9 See s IV.

10 UN General Assembly Resolution A/RES/68/163, 2013.

11 For a timeline of UN resolutions on safety of journalists, see s IV. For UNESCO decisions, see n 2 above, Annex B.

7. While these efforts have raised the profile of the issue and improved global understanding of the problem, they remain insufficient, as evidenced by the fact that attacks against journalists keep increasing,<sup>12</sup> and the overwhelming majority of investigations into such attacks remain inconclusive. Former UN Secretary-General Ban Ki-moon noted in his August 2015 report on the safety of journalists that the international legal framework for the protection of journalists and media workers was in place, but ‘the major challenge remained to ensure compliance with this framework and to guarantee that perpetrators are held accountable for attacks against journalists’.<sup>13</sup>
8. There are two main factors for the ongoing failure to conduct effective investigations. The first is capacity, notably due to ineffective institutions and corruption which render authorities unable to investigate. Many of the countries with the highest numbers of attacks on journalists suffer from a capacity issue with national investigators and prosecutors not having the training, ability or willingness to tackle corrupt and powerful networks. Shortcomings include the inability to properly secure a crime scene, analyse certain types of evidence and interrogate powerful suspects.<sup>14</sup>
9. The second is the lack of political will to pursue accountability. Journalists are usually attacked because they bother those in powerful places. In approximately one out of four murders, the prime suspects have been government or military officials who often interfere to block or derail any investigation.<sup>15</sup> Meanwhile, there is still little or no international cost for governments or officials that purposely block or undermine investigations in cases of attacks on journalists.
10. This report recommends that signatories to the Global Pledge on Media Freedom and other key governments adopt a three-pronged strategy to strengthen investigations into attacks on journalists through:

(1) *Setting up a standing international Investigative Task Force – made up of vetted and trained investigators, forensic experts and legal specialists – that can quickly deploy to crime scenes and/or support national investigators and prosecutors as needed.*

(2) *Supporting non-governmental organisations (NGOs) working to collect evidence related to crimes against journalists and strengthening their capacity to transfer this evidence to UN mechanisms and courts with jurisdiction over the relevant crimes.*

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12 UNESCO’s latest report in its ‘World Trends in Freedom of Expression and Media Development’ notes a ‘surge in harassment, arrests and physical violence against journalists, mostly at the hands of State-led security forces’. UNESCO, Safety of Journalists Covering Protests – Preserving Freedom of the Press During Times of Civil Unrest, 14 September 2020 <https://news.un.org/en/story/2020/09/1072262> accessed 5 November 2020.

13 UN General Assembly, *The Safety of Journalists and the Issue of Impunity: Report of the Secretary-General*, 6 August 2015, A/70/290, para 17 <https://undocs.org/A/70/290> accessed 5 November 2020.

14 See s III.2.

15 See CPJ, ‘Getting away with Murder’, 27 October 2016 (analysing journalists’ murders that took place between 2006 and 2016).

(3) *Strengthening the UN's capacity to hold the worst violators of journalists' right accountable* through:

- i. making the Investigative Task Force available to the UN Special Rapporteur on freedom of expression and other UN entities that are reporting on abuses against journalists;
  - ii. creating the role of a Special Representative of the UN Secretary-General for the Safety of Journalists to give increased political weight to UN efforts to follow up on investigations into attacks on journalists – a civil society campaign to create such a position has garnered key support among media outlets, NGOs and key officials, and deserves political backing to succeed; and
  - iii. publishing a list of countries and armed groups that are the worst perpetrators of attacks on journalists that the UN Secretary-General would be tasked with presenting to the Security Council and the General Assembly. This list can be based on data collected by existing UN mechanisms, as well as NGOs that monitor attacks on journalists. Inclusion on the list would lead to a range of graduated measures that could include targeted sanctions against key officials responsible for attacks on journalists or obstruction of investigations.<sup>16</sup> The measures could be taken through a UN framework or through the Media Freedom Coalition, a group of 37 countries that have committed to ending impunity for attacks on journalists. Removal from such a list would require listed countries to show that they conducted effective investigations into attacks on journalists, leading to prosecutions, where appropriate.
11. Focusing on these three elements does not mean that local or regional efforts, ranging from training local prosecutors to decisions by regional courts, are not essential. This report highlights some of the initiatives that have taken place in a number of countries and regions, but its primary focus is on how to strengthen the international toolbox to push for more effective investigations and ultimately address impunity for attacks on journalists.

*Set up an Investigative Task Force to conduct and assist in investigations*

12. This report recommends the creation of a standing Investigative Task Force staffed by international experts specialised in various aspects of criminal investigations and prosecutions that can be rapidly deployed to assist national, regional or international investigations into attacks against journalists. Assistance could be for specific criminal investigations into a journalist's murder or arbitrary imprisonment or to

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<sup>16</sup> For more information on the use of targeted sanctions to protect journalists, see the previous report issued by the Independent High Level Panel of Legal Experts on Media Freedom Report on the Use of Targeted Sanctions to Protect Journalists, 13 February 2020 [www.ibanet.org/Document/Default.aspx?DocumentUid=1734a793-fd31-452d-84ca-b85efc4af744](http://www.ibanet.org/Document/Default.aspx?DocumentUid=1734a793-fd31-452d-84ca-b85efc4af744) accessed 5 November 2020.

address systemic issues, such as the absence of a witness protection programme or the need for forensic training. This model could also be expanded to investigate abuses against human rights defenders and other grave human rights abuses against other individuals and groups.<sup>17</sup>

13. Sending international experts to conduct criminal investigations or assist local investigations has proven effective in overcoming local capacity issues and corruption.<sup>18</sup> But such deployments remain an exception and often require lengthy negotiations and logistical build-up, which reduces their effectiveness. In the case of attacks on journalists, the deployment of international experts to assist in investigations has so far been limited to a handful of cases of bilateral support for investigations into the killing of Western journalists in conflict zones, such as Federal Bureau of Investigation (FBI) support for the investigation into the murder of Daniel Pearl in Pakistan,<sup>19</sup> or other high-profile cases, such as the recent murders of Daphne Caruana Galizia in Malta or Khashoggi in Turkey.<sup>20</sup>
14. To address impunity for international crimes, there are growing calls for the creation of a standing investigative body or to otherwise strengthen the investigative capacity of the UN.<sup>21</sup> The former United Kingdom Foreign Secretary has called on UN Member States 'to create a permanent, independent investigatory body with a mandate to be deployed to gather and assess evidence in cases involving alleged war crimes, crimes against humanity, and other grave violations of human rights'.<sup>22</sup>

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17 As the UN's 2012 Plan of Action on the Safety of Journalists and the Issue of Impunity notes, 'Efforts to end impunity with respect to crimes against journalists must be associated with the defence and protection of human rights defenders, more generally' [https://en.unesco.org/sites/default/files/un-plan-on-safety-journalists\\_en.pdf](https://en.unesco.org/sites/default/files/un-plan-on-safety-journalists_en.pdf) accessed 5 November 2020.

18 See s VI, which reviews the evolution of UN investigative mechanisms.

19 The FBI investigated the murder of Pearl in Afghanistan (for more details, see the interview with the former FBI investigator who worked on the case [www.nbcnews.com/id/wbna19370130](http://www.nbcnews.com/id/wbna19370130)), and France dispatched French investigators to the Central African Republic to investigate the murder of Camille Lepage (see, eg, 'Une enquête ouverte à Paris sur la mort de Camille Lepage' (Franceinfo, 14 May 2014) [www.francetvinfo.fr/monde/une-enquete-ouverte-a-paris-sur-la-mort-de-camille-lepage\\_1687565.html](http://www.francetvinfo.fr/monde/une-enquete-ouverte-a-paris-sur-la-mort-de-camille-lepage_1687565.html) accessed 5 November 2020).

20 The US sent FBI experts and the Dutch dispatched forensic experts to support the Maltese investigation into the murder of Caruana Galizia [www.independent.com.mt/articles/2017-10-17/local-news/Home-Minister-says-FBI-Dutch-experts-to-help-in-Daphne-murder-investigation-6736180326](http://www.independent.com.mt/articles/2017-10-17/local-news/Home-Minister-says-FBI-Dutch-experts-to-help-in-Daphne-murder-investigation-6736180326) accessed 5 November 2020.

21 The demands for such a standing mechanism have come at a time when the UN has set up different investigative mechanisms for particular situations, notably the 'International Independent and Impartial Mechanism for Syria, the Independent Investigative Mechanism for Myanmar and the UN Investigative Team to Promote Accountability for Crimes Committed by Da'esh/ISIL (UNITAD). These mechanisms have mandates that include the preparation of files that can be used in national, regional and international criminal trials. See Federica D'Alessandra, 'The Accountability Turn in Third Wave Human Rights Fact-Finding' (2017) 33(84) *Utrecht Journal of International and European Law* 59. See also *Anchoring Accountability for Mass Atrocities: Providing the Support Necessary to Fulfil International Investigative Mandates* <http://opiniojuris.org/2020/09/18/anchoring-accountability-for-mass-atrocities-providing-the-support-necessary-to-fulfil-international-investigative-mandates> accessed 5 November 2020. The International Bar Association and the Programme on International Peace and Security at the University of Oxford are partnering to understand exactly what the best form of support would be for UN investigations [www.elac.ox.ac.uk/moving-fact-finding-case-building](http://www.elac.ox.ac.uk/moving-fact-finding-case-building).

22 'The UN Needs a New Body to Investigate War Crimes so that No One Can Escape Justice' *The Daily Telegraph* (London, 26 September 2018) [www.telegraph.co.uk/news/2018/09/26/angelina-jolie-william-hague-un-needs-new-body-investigate-war](http://www.telegraph.co.uk/news/2018/09/26/angelina-jolie-william-hague-un-needs-new-body-investigate-war) accessed 5 November 2020. They note that '[s]uch a body should have a clear mandate, strong investigative powers, dedicated staff and sustainable funding. It could either grow out of the existing Mechanism for Syria, which could be enlarged and made permanent, or it could be established as a new and separate body modelled, for instance, on the Organisation for the Prohibition of Chemical Weapons'.

The International Commission of Jurists (ICJ) has also proposed the creation of a UN Standing Independent Investigative Mechanism (SIIM) that could investigate crimes under international law as opposed to creating ad hoc investigatory mechanisms to deal with particular conflicts or situations.<sup>23</sup>

15. The UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Agnes Callamard, recommended after her investigation into the murder of journalist Khashoggi that the UN General Assembly or UNHRC establish a 'Standing Instrument' to investigate allegations of targeted killings and other acts of violence against journalists, human rights defenders or others targeted because of their peaceful activities or expressions. The mandate of the proposed instrument would be to investigate such violations, and prepare files to facilitate and expedite fair and independent criminal proceedings in courts or tribunals that have or may in the future have jurisdiction over the crimes being investigated.<sup>24</sup> This report endorses the proposed creation of a permanent UN investigative body as an essential tool in the fight against impunity and urges signatories to the Global Pledge on Media Freedom and other key governments to work on its establishment. However, the Panel recognises that – regrettably – the creation of a permanent UN investigative body does not currently have political support. In such a context, it becomes important to explore alternatives to provide investigative support to existing UN mechanisms. As David Kaye, the former UN Special Rapporteur on freedom of expression noted: 'Throughout the many fact-finding missions and investigations that I have conducted during my mandate as Special Rapporteur, one of the key challenges has been the lack of effective investigative support. Access to quickly deployable investigators – from forensic specialists to digital experts – would make the work of UN special rapporteurs more impactful.'<sup>25</sup>
16. The Panel therefore recommends that signatories to the Global Pledge on Media Freedom work in parallel to create a standalone multilateral Investigative Task Force that would be focused on attacks against journalists. Such a multilateral body would be composed of international experts readily available to support investigations – local, regional or international – into attacks on journalists and human rights defenders. While it would not have a UN mandate, a multilateral Investigative Task Force set up by a group of like-minded countries that form the Media Freedom Coalition – a 'coalition of the committed' – would present a number of key strengths:
  - It will be less susceptible to current UN blockages and can be set up faster and with fewer compromises.

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23 See <https://opiniojuris.org/2019/04/10/is-it-time-to-create-a-standing-independent-investigative-mechanism-siim> accessed 5 November 2020.

24 Annex to the Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions: Investigation into the unlawful death of Mr Jamal Khashoggi, A/HRC/41/CRP.1, 19 June 2019, para 476.

25 Interview with David Kaye, 26 October 2020.

- Its creation by a group of 37 countries<sup>26</sup> from different parts of the world that have signed the Global Pledge on Media Freedom and committed to ‘working together to protect media freedom’ internationally means that this group should provide political credibility and a deeper pool of talent than any unilateral or bilateral initiative.<sup>27</sup> In particular, such a Task Force will be able to draw on a wide range of investigative and legal skills, as well as regional and linguistic expertise.
  - It will complement existing mechanisms. A multilateral Investigative Task Force would support existing UN, regional and national institutions and investigations. In addition, a successful multilateral Task Force could act as a powerful precedent that strengthens momentum for the creation of a permanent UN investigative body by showing the effectiveness of such a mechanism.
17. The Task Force should be hosted by an organisation with global reach, independence and the right convening power. A natural candidate would be the International Bar Association (IBA), which is already acting as the Secretariat for the High Level Panel of Legal Experts on Media Freedom, and is a pioneer in promoting human rights and the rule of law.
  18. To succeed, the Task Force will need to be properly funded and well-resourced, and States in the Media Freedom Coalition should commit to funding it as part of their overall commitment to media freedom. Countries that are unable to provide funding should at the very least designate individuals who would be eligible to serve on such a Task Force if called upon to do so, in other words, placing individual investigators, forensic experts, specialist interviewers and lawyers on a roster of experts who could be called upon at no cost to investigate attacks against journalists. Committed states should also support the deployment of the Task Force where appropriate using political advocacy in both bilateral and multilateral contexts.
  19. The Task Force would be able to intervene in investigations based on a request by a national, regional or international entity with a mandate to investigate or monitor human rights violations. The Task Force would fill a key gap in existing investigations by ensuring that UN or national authorities can call upon top-level experts who have been pre-trained, pre-screened and pre-vetted, and who can deploy on very short notice. It could also respond to requests by civil society organisations working on documenting or investigating attacks on journalists. To ensure that the Task Force uses its resources strategically, requests from civil society could be filtered through the Advisory Network of the Media Freedom Coalition, which includes leading NGOs working on media freedom.<sup>28</sup>

<sup>26</sup> As of 1 October 2020.

<sup>27</sup> Global Pledge on Media Freedom [www.gov.uk/government/publications/global-pledge-on-media-freedom/global-pledge-on-media-freedom](https://www.gov.uk/government/publications/global-pledge-on-media-freedom/global-pledge-on-media-freedom) accessed 5 November 2020.

<sup>28</sup> As of 28 October 2020, the Advisory Network of the Media Freedom Coalition is composed of 17 leading NGOs working on media freedom. A full list is available at [www.gov.uk/government/publications/media-freedom-coalition-terms-of-reference/media-freedom-coalition-terms-of-reference#annex-2-advisory-network-membership-full-list](https://www.gov.uk/government/publications/media-freedom-coalition-terms-of-reference/media-freedom-coalition-terms-of-reference#annex-2-advisory-network-membership-full-list) accessed 5 November 2020.

20. Baroness Helena Kennedy QC, shared her support for the creation of the Task Force, based on her experience as part of the team that investigated the murder of Jamal Khashoggi. 'The extra-judicial murder of Jamal Khashoggi was an egregious crime that shocked the world. I was part of the informal, small investigation team that was invited to Turkey three months after the murder to investigate the crime and assist Agnès Callamard, UN Special Rapporteur on extrajudicial, summary or arbitrary executions. We were wholly under-resourced to investigate such a serious crime, it would have been much more appropriate for the international community to devote resources to the investigation rather than empty statements of condemnation. Such support would have been particularly important given the Saudi attempts to hide evidence and obstruct access to key locations. It is crucial that members of the Media Freedom Coalition support the establishment of an international Investigative Task Force to help address the issue of rampant impunity.'

### ***Strengthen evidence-gathering efforts by NGOs***

21. In recent years, many NGOs focused on protecting journalists have expanded their work to include gathering evidence for purposes of criminal investigations, and some have even begun cooperating closely with prosecutors to bring legal cases against perpetrators of attacks against journalists. These evidence-gathering efforts open new possibilities in furthering accountability for attacks on journalists, but they also raise a number of questions and risks that need to be addressed.<sup>29</sup> These include: (1) untrained collection of physical or forensic evidence that could limit its value before a court if the chain of custody is not properly handled; (2) protection of witnesses if NGOs take statements for the purpose of possible prosecution; and (3) re-traumatisation and conflicting statements that may result if victims and witnesses take part in multiple interviews, sometimes months or years apart. The Media Freedom Coalition should disseminate best practices for collecting and sharing evidence between NGOs and UN/judicial institutions, and support capacity building initiatives for local groups working on investigating attacks on journalists.<sup>30</sup>

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29 The debate about the role of NGOs in gathering evidence for purposes of prosecutions was initially raised in the context of NGOs transferring information and evidence to the International Criminal Court. For a background on some of these issues, see Human Rights First, 'The Role of Human Rights NGOs in Relation to ICC Investigations', September 2004 [www.iccnw.org/documents/HRF-NGO\\_RoleInvestigations\\_0904.pdf](http://www.iccnw.org/documents/HRF-NGO_RoleInvestigations_0904.pdf) accessed 5 November 2020. For recent discussions about the role of NGOs in supporting international investigations see <http://opiniojuris.org/2020/09/18/anchoring-accountability-for-mass-atrocities-providing-the-support-necessary-to-fulfil-international-investigative-mandates>; <http://opiniojuris.org/2020/09/18/anchoring-accountability-for-mass-atrocities-providing-the-permanent-support-necessary-to-fulfil-international-investigative-mandates-part-ii>; <http://opiniojuris.org/2020/09/19/anchoring-accountability-for-mass-atrocities-providing-the-permanent-support-necessary-to-fulfil-international-investigative-mandates-part-iii>.

30 For guidelines on civil society documentation of serious human rights violations, see F. D'Alessandra et al., *Handbook on Civil Society Documentation of Serious Human Rights Violations*, (Public International Law & Policy Group, 2016) [https://static1.squarespace.com/static/5900b58e1b631bffa367167e/t/59dfab4480bd5ef9add73271/1507830600233/Handbook-on-Civil-Society-Documentation-of-Serious-Human-Rights-Violations\\_c.pdf](https://static1.squarespace.com/static/5900b58e1b631bffa367167e/t/59dfab4480bd5ef9add73271/1507830600233/Handbook-on-Civil-Society-Documentation-of-Serious-Human-Rights-Violations_c.pdf).



### **Strengthening the UN's response**

22. Despite the adoption of multiple resolutions calling for more effective investigations into attacks on journalists by the UN General Assembly, UN Security Council, UNESCO's governing bodies and the UNHRC, there is still little or no political cost to governments and officials that attack journalists or purposely block or undermine investigations into such attacks.
23. A civil society campaign put forward a proposal – led by RSF and since endorsed by more than 130 media outlets – for the UN to create the position of a Special Representative of the UN Secretary-General for the Safety of Journalists (SRSJ).<sup>31</sup> Appointed and mandated by the Secretary-General, the SRSJ would act in a central and permanent role in charge of elevating political attention to the issue and strengthening existing mechanisms.<sup>32</sup> The proposed role would have a much wider mandate and visibility than the current senior adviser role in the Secretary-General's team in charge of following up on the safety of journalists. This report endorses the proposal for the creation of a new Special Representative, but would widen its mandate to also include human rights defenders or others targeted because of their peaceful activities or expression.
24. The UN should also increase its efforts to hold the worst violators of media freedom politically accountable at the Security Council and General Assembly. Such an approach of highlighting the worst violators has been adopted in tackling violations against children in armed conflict, where the UN Secretary-General is required every year to submit to the Security Council a list of countries that commit the gravest violations against children in armed conflict.<sup>33</sup> The list has been described as a 'powerful tool' by advocacy groups as it combines the deterrent effect of 'naming and shaming' with built-in processes to address the problem.<sup>34</sup> Once a country is included in the list, the UN endeavours to work with it with a view to adopting *an action plan that makes clear what steps the country must take to end violations and come off the list*.
25. Currently, the UN Secretary-General reports periodically to the Security Council and the General Assembly about attacks on journalists, but unlike the reporting in place with respect to violations against children in armed conflict, the reports do not specifically list the worst offenders nor is the reporting tied to specific actions

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31 See <https://rsf.org/en/node/31402/Read%20the%20appeal%20for%20a%20protector%20of%20journalists> accessed 5 November 2020.

32 S VIII describes the proposed mandate of the SRSJ.

33 The list is prepared based on UN Security Council Resolution 1379 (2001), which '[r]equests the Secretary-General to attach to his report a list of parties to armed conflict that recruit or use children in violation of the international obligations applicable to them, in situations that are on the Security Council's agenda or that may be brought to the attention of the Security Council by the Secretary-General, in accordance with Article 99 of the Charter of the United Nations, which in his opinion may threaten the maintenance of international peace and security'.

34 See, eg, HRW reference to the list as a 'powerful tool for accountability and ending violations against children' [www.hrw.org/news/2019/07/30/un-new-list-shame-shortchanges-children](http://www.hrw.org/news/2019/07/30/un-new-list-shame-shortchanges-children) accessed 5 November 2020.



that states have to complete if they are to be taken off the list. This limits the impact of the reporting on state behaviour.<sup>35</sup>

26. This report recommends that the Media Freedom Coalition call on the UN Secretary-General to expand his reporting to the Security Council and the General Assembly by:

(a) developing a *list of the worst violators of journalists' rights* – this can be based on the very helpful indices created by CPJ and RSF, as well as UNESCO and other UN sources; and

(b) outlining *specific consequences of being on the list, such as targeted financial sanctions against those most responsible, and specific milestones that constitute conditions for removal from the list*, including, where appropriate, allowing the UN to effectively investigate attacks on journalists.

Alternatively, the Media Freedom Coalition can itself take the steps outlined in (a) and (b).

### ***The way forward***

27. As the Global Pledge on Media Freedom recognised, 'In the face of threats to media freedom that are new in scale and in nature, we must adopt new forms of collaboration that adapt to new realities'.<sup>36</sup> This report concludes that any successful effort to promote effective investigations into crimes targeting journalists will require increased collaboration and innovation between the UN, individual Member States and NGOs.
28. A cornerstone of any effective collaboration to end impunity for attacks on journalists is the creation of an Investigative Task Force that can ensure quick deployments of international investigators and experts. NGO efforts to conduct evidence-gathering should be magnified so that they can develop local partnerships and work on less prominent cases. And those who commit egregious violations against journalists should know that there is a political cost to pay.

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35 Existing UN Security Council resolutions, notably Resolutions 1738 (2006) and 2222 (2015), require the UN Secretary-General to include in his reports on protection of civilians in armed conflict some information about attacks on journalists. Eg, UN SC Resolution 2222 (2015), para 19, '[r]equests the Secretary General to include consistently as a sub item in his reports on the protection of civilians in armed conflict the issue of the safety and security of journalists, media professionals and associated personnel, including the existence of measures to protect such individuals facing an imminent threat, and to ensure that information on attacks and violence against journalists, media professionals and associated personnel and preventative actions taken to prevent such incidents is included as a specific aspect in relevant country specific reports'. Similar reporting requirements exist in a number of General Assembly resolutions. Eg, see n 13 above prepared pursuant to UN General Assembly Resolution 69/185.

36 See [www.gov.uk/government/publications/global-pledge-on-media-freedom/global-pledge-on-media-freedom](https://www.gov.uk/government/publications/global-pledge-on-media-freedom/global-pledge-on-media-freedom) accessed 5 November 2020.

## II. Scope and acknowledgements

29. This report focuses on international efforts and initiatives to promote more effective investigations into attacks on journalists and tackle persistent impunity. While its emphasis is international, it also reviews certain regional and national initiatives to improve investigations. Given the specificities of each country's challenges and judicial set-up, it is impossible to adopt a one-size-fits-all recommendation in terms of national initiatives that will strengthen investigations into attacks on journalists.
30. In the process of preparing this report, the panel has had the great benefit of consulting with a number of individuals and organisations through in-person meetings and telephone interviews, including:
- Mr. Rob Berschinski (Senior Vice President, Human Rights First)
  - Ms. Agnès Callamard (UN Special Rapporteur on extrajudicial, summary or arbitrary executions)
  - Mr. Simon Crowther (Legal Adviser, Amnesty International) and Mr. Daniel Joloy (Senior Policy Adviser, Amnesty International)
  - Federica D'Alessandra (Executive Director, Oxford Programme on International Peace and Security)
  - Mr. Christophe Deloire (Executive Director, RSF), Ms. Isabelle Amossé (Head of Advocacy, RSF), Mr. Antoine Bernard (Senior Adviser, International Strategic Litigation)
  - Mr. Harlem Désir (OSCE Representative on Freedom of the Media)
  - Mr. Samuel Emonet (Director of Operations, Justice Rapid Response)
  - Ms. Jodie Ginsberg (former Chief Executive Officer (CEO), Index on Censorship)
  - Mr. David Kaye (former Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression)
  - Ms. Suzanne Nossel (CEO, PEN America) and Ms. Dru Menaker (Chief Operating Officer (COO) and Director of International Partnerships, PEN America)
  - Mr. Stephen Rapp, Chair of the Commission for International Justice & Accountability (CIJA)
  - Mr. Joel Simon (Executive Director, CPJ) and Ms. Courtney Radsch (Advocacy Director, CPJ)
31. The author of this report is grateful to his colleagues on the High Level Panel of Legal Experts on Media Freedom whose insights have proven invaluable throughout

the process. The author is particularly grateful to fellow panel member Mr. Can Yeğinsu who contributed directly to the report through his work on standards of transparency in the conduct of investigations. The author would like to convey his special thanks to the IBA's Human Rights Institute for acting as the Secretariat for the panel's work and, in particular, for the efforts, patience and support of Baroness Helena Kennedy of The Shaws, Ms. Perri Lyons and Ms. Zara Iqbal. Finally, the author would like to express his gratitude and recognise the efforts of Ms. Amal Clooney, who provided thoughtful and constructive feedback throughout the process. The report would not have made it to the finish line without her support.

### III. Increasing attacks on journalists, persistent impunity

32. In recent years, there has been an increase in the scale and number of attacks against journalists. According to UNESCO data, 495 journalists were killed between 2014 and 2018, which represents an 18 per cent increase in the number of killings compared to the preceding five-year period (2009–2013).<sup>37</sup> Attacks against journalists have evolved, with increasing numbers of journalists killed outside of conflict areas. Aside from fatal attacks, journalists are increasingly exposed to other forms of violence and harassment, including kidnappings, forced disappearances, unlawful imprisonment and physical attacks. Online threats and harassment are also a growing issue, with female journalists disproportionately targeted by harassment and abuse online.
33. The evolving nature of threats and attacks requires an evolution in the way national and international authorities investigate them. To address new online attacks, often conducted from outside national jurisdictions, authorities need to develop new capacities to track such threats. Countries may also need to amend their criminal codes to capture new types of attacks. The increasing threat to female journalists and the structural obstacles that women face to file complaints also require an evolution in state responses.

#### 1) *Key trends in attacks on journalists*

##### A) **ATTACKS OCCURRING MORE FREQUENTLY AND IN MORE PLACES**

34. The large majority of killed journalists were not on assignment in foreign countries or in war, but were local journalists working close to home. According to UNESCO's data, local journalists represented 91 per cent of all killed journalists during the 2014–2018 period.<sup>38</sup> The trend regarding the proportion of killings of journalists in conflict zones compared to those outside of conflict zones has been reversed in recent years. While in 2014, 66 per cent of killings occurred in countries experiencing armed conflict, in 2017 and 2018, the majority of journalists were killed in non-conflict areas (55 per cent in both years). This points towards a shift in the circumstances, motives and type of perpetrators involved in killings of journalists.
35. While extremist armed militant groups, such as Boko Haram and the Islamic State group (ISIS), continue to represent a major risk, criminal groups have also become a major threat, killing large numbers of journalists and routinely escaping justice. Mexico, one of the deadliest countries for journalists in recent years, has seen its efforts to tackle impunity worsen in the last decade, as criminal cartels waged a

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37 See n 2 above.

38 *Ibid.*

campaign of attacks on journalists. According to CPJ, of at least 31 murders of journalists that took place in Mexico between 2009 and 2019, authorities have secured only one conviction.<sup>39</sup>

36. In recent years, violence against journalists has also spread to places previously considered relatively safe. The October 2017 car bombing that killed investigative journalist Caruana Galizia in Malta, followed by the murder of Slovakian journalist Ján Kuciak in February 2018, sent a worrying message to journalists in the EU about the dangers of covering crime and corruption. The number of alerts about serious threats to journalists in Council of Europe countries has sharply increased in recent years, leading a platform of key media organisations to note in 2019 that 'Press freedom in Europe is more fragile now than at any time since the end of the Cold War'.<sup>40</sup>
37. Public officials and political leaders who denigrate and threaten the media, and undermine its credibility, have also exacerbated risks for journalists.<sup>41</sup> Examples include political leaders voicing regret that journalists were not yet 'an extinct species',<sup>42</sup> or state publications publishing lists of journalists who criticise the government and describing them as 'traitors'.<sup>43</sup> Verbal attacks by politicians and the hostile environment they enable risk increasing the violence against journalists as the UN and Inter-American experts on freedom of expression highlighted in 2018 following United States President Donald Trump's repeated attacks on the free press.<sup>44</sup>

## **B) INCREASE IN ONLINE ATTACKS AGAINST JOURNALISTS**

38. Evolving digital technologies have given rise to new forms of online attacks on journalists ranging from 'invasion of privacy' to 'direct harassment'. Invasion of privacy attacks include the hacking of journalists' phones and computers, as well as the use of ransomware (a type of malware that threatens to publish the victim's

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39 See n 3 above.

40 *Annual Report by the Partner Organisations to the Council of Europe Platform to Promote the Protection of Journalism and Safety of Journalists, Democracy at Risk: Threats and Attacks Against Media Freedom in Europe*, 2019, p 5. The report represents a joint effort by 12 partner organisations to the platform to raise awareness about key developments related to press freedom in the Council of Europe region.

41 As recognised in UNHRC, Resolution 39/6, at operational para 8.

42 COE, 'Czech President Expresses Regret that Journalists not yet Extinct Species', 7 September 2018 [www.coe.int/en/web/media-freedom/detail-alert?p\\_p\\_id=sojdashboard\\_WAR\\_coesojportlet&p\\_p\\_lifecycle=0&p\\_p\\_col\\_id=column-3&p\\_p\\_col\\_pos=1&p\\_p\\_col\\_count=11&sojdashboard\\_WAR\\_coesojportlet\\_alertPK=39197683&sojdashboard\\_WAR\\_coesojportlet\\_displayLink=SojPortlet.getDashboardPortletId\(\)](http://www.coe.int/en/web/media-freedom/detail-alert?p_p_id=sojdashboard_WAR_coesojportlet&p_p_lifecycle=0&p_p_col_id=column-3&p_p_col_pos=1&p_p_col_count=11&sojdashboard_WAR_coesojportlet_alertPK=39197683&sojdashboard_WAR_coesojportlet_displayLink=SojPortlet.getDashboardPortletId()) accessed 5 November 2020.

43 COE, 'Serbian Weekly Describes Independent Media as "Traitors"', 19 November 2018 [www.coe.int/en/web/media-freedom/detail-alert?p\\_p\\_id=sojdashboard\\_WAR\\_coesojportlet&p\\_p\\_lifecycle=0&p\\_p\\_col\\_id=column-4&p\\_p\\_col\\_count=1&sojdashboard\\_WAR\\_coesojportlet\\_alertId=41430909](http://www.coe.int/en/web/media-freedom/detail-alert?p_p_id=sojdashboard_WAR_coesojportlet&p_p_lifecycle=0&p_p_col_id=column-4&p_p_col_count=1&sojdashboard_WAR_coesojportlet_alertId=41430909) accessed 5 November 2020.

44 See joint statement by David Kaye, UN Special Rapporteur on freedom of expression and Edison Lanza, IACHR, noting that Trump's repeated attacks on journalists 'increase the risk of journalists being targeted with violence'. OHCHR, 'Trump Attacks on Media Violate Basic Norms of Press Freedom, Human Rights Experts Say', 2 August 2018 [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23425&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23425&LangID=E) accessed 5 November 2020.

data or perpetually block access to it unless a ransom is paid). The cybertools used to surveil, harass and silence journalists have become more sophisticated, increasing their power to jeopardise journalists' personal safety.

39. Journalists are also increasingly the target of abuse through social media and other online means, in some cases, including violent threats of death and rape. While online attacks are common to all journalists, female journalists are affected the most by cyber harassment, with two-thirds of women journalists reporting having been victims of harassment and, in 25 per cent of the cases, the harassment occurred online.<sup>45</sup>
40. The sources of online threats and insults may be ordinary 'trolls' (individuals or communities of individuals hiding behind their screens) or armies of online mercenaries orchestrated by authoritarian regimes or by political or other interest groups to silence critical discussion.<sup>46</sup> Notable examples include:
  - In India, freelance journalist Rana Ayyub was attacked online by trolls who support Prime Minister Narendra Modi, called Yoddhas, who targeted her because of her investigative reporting on Modi's rise to power.<sup>47</sup> 'I've been called Jihadi Jane, Islamo fascist [and] ISIS sex slave', she told RSF. 'My face has been superimposed on a naked body and my mother's photograph has been taken from my Instagram account and photoshopped in the most objectionable manner possible'.<sup>48</sup>
  - In the Philippines, trolls attacked prominent journalist Maria Ressa, while the news website she runs, Rappler, was the target of judicial harassment. Philippine journalists who, like her, cover the government in a critical manner have been constantly targeted since Rodrigo Duterte's election as president in 2016.<sup>49</sup>
41. Research by various press rights groups have revealed that online attacks are a global phenomenon, including in established democracies where press freedom is not traditionally seen as challenged. In March 2017, the Council of Europe published a survey of 940 journalists across 47 member countries, which found that 53 per cent of the journalists polled had faced some form of cyber harassment, including

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45 See <https://rsf.org/en/news/rsf-publishes-report-online-harassment-journalists> accessed 5 November 2020.

46 RSF has investigated and documented cases of online harassment of journalists in 32 countries, shedding light on hate campaigns orchestrated by authoritarian or oppressive regimes in such countries as China, India, Turkey, Vietnam, Iran and Algeria. 'Online Harassment of Journalists: Attack of the Trolls', 25 July 2018 [https://rsf.org/sites/default/files/rsf\\_report\\_on\\_online\\_harassment.pdf](https://rsf.org/sites/default/files/rsf_report_on_online_harassment.pdf) accessed 5 November 2020.

47 Rana Ayyub wrote a book describing how Modi exploited the anti-Muslim riots in the state of Gujarat in 2002 to help his rise to the position of Prime Minister.

48 For more background on the case, read RSF, 'RSF Urges Indian Authorities to Protect Woman Journalist', 27 April 2018 <https://rsf.org/en/news/rsf-urges-indian-authorities-protect-woman-journalist> accessed 5 November 2020.

49 See <https://rsf.org/en/news/rsf-publishes-report-online-harassment-journalists>, and with respect to judicial harassment of Rappler, <https://rsf.org/en/news/philippine-government-brings-two-new-complaints-against-rappler> accessed 5 November 2020.

personal attacks, public defamation and smear campaigns.<sup>50</sup> These aggressive cyber harassment campaigns are also waged by communities of individuals or political groups in supposedly democratic countries, such as Mexico, and even in countries that are ranked at the top of the World Press Freedom Index, such as Finland and Sweden.<sup>51</sup>

42. Online attacks often have real life impact. Journalists targeted with online harassment face severe personal and professional consequences. Many decide to censor themselves or avoid covering certain topics, which ultimately harms the public interest and limits debate in democratic societies.<sup>52</sup> According to a 2017 Council of Europe study, 31 per cent of journalists tone down their coverage of certain stories after being harassed, 15 per cent drop the story, 23 per cent do not cover certain stories and 57 per cent do not report that they have been the targets of online violence.<sup>53</sup> Seeing online violence against other journalists also has a deterrent effect. Even journalists who have never been harassed may be dissuaded from covering sensitive subjects or from posting too often on social networks. The harassers send a message to all journalists, not just their direct victims.
43. It is clear that state-led measures are needed to combat online attacks on journalists. In particular, there is a clear need for proper legal remedies to ensure that online aggressors are investigated and held accountable for their actions in the virtual world and to deter would-be attackers. In many cases, however, there is a lack of clarity about how best to pursue legal accountability for online harassment, which in some cases may lead to the adoption of new, overly broad laws that harm freedom of expression.

### C) 'GENDER-SPECIFIC THREATS' AGAINST WOMEN JOURNALISTS

44. In recent years, there has been an increase in the number of gender-specific attacks on journalists. Female journalists are facing increased sexual harassment, sexual violence and threats of violence, and are targeted more frequently and viciously online than their male counterparts.<sup>54</sup> Moreover, attacks are often highly sexualised in nature and aim to silence female journalists, not only due to their journalistic work, but also 'for speaking out as women'.<sup>55</sup> According to recent surveys by the International Federation of Journalists (IFJ), the International Women's Safety Institute (IWMI) and Trollbusters, nearly two-thirds of the women journalists

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50 Marilyn Clark and Anna Grech, *Journalists Under Pressure – Unwarranted Interference, Fear and Self-Censorship in Europe* (Council of Europe, 2017) p 13 <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168070ad5d> accessed 5 November 2020.

51 See n 45 above.

52 *Ibid.*

53 See n 49 above.

54 See n 2 above, pp 45 and 49 <https://unesdoc.unesco.org/ark:/48223/pf0000371487> accessed 5 November 2020.

55 *Ibid.*, p 49.

surveyed said they have experienced some form of online abuse.<sup>56</sup> This online abuse is occurring even in well-established democracies with strong free media tradition. CPJ's research into safety concerns facing female journalists in the US and Canada found that online harassment is by far the biggest threat. More than 90 per cent of respondents in the US and 71 per cent of respondents in Canada said online harassment is the biggest threat facing them as journalists.<sup>57</sup>

45. In an analysis of two million tweets, the British think-tank Demos found that journalism was one of the categories in which women received more insults than men.<sup>58</sup> According to legal scholar Danielle Keats Citron, gender-based cyber harassment often involves a perfect storm of threats, doctored photographs, privacy invasions, lies and technical sabotage.<sup>59</sup>
46. Online threats have the potential to enable or promote attacks offline as journalists addresses and photos are shared widely.<sup>60</sup> Killings of women journalists almost doubled relative to the previous five-year period (24 female journalists were killed in 2009–2013, compared to 46 in 2014–2018).<sup>61</sup>
47. Structural discrimination limits women journalists' access to prevention and protection measures, both from the State and from their employer, as well as access to effective remedies. Among a variety of factors, this includes:
  - discriminatory attitudes that discourage women from reporting gender-based violence and sexual violence to the authorities or their employers, and seeking support;
  - the lack of gender-responsive risk-assessment protocols and protection measures;
  - the tendency for law enforcement authorities or employers to downplay or ignore the seriousness of attacks against women, online and offline; fail to start or exhaustively investigate; or consider women's journalistic work as a motive behind attacks; and

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56 According to a 2018 survey of 267 journalists, of which 58.7 per cent of respondents were women. 'IFJ Survey: Two-Thirds of Women Journalists Suffered Gender-Based Online Attacks' (IFJ, 7 December 2018) [www.ifj.org/media-centre/news/detail/category/human-rights/article/ifj-survey-two-thirds-of-women-journalists-suffered-gender-based-online-attacks.html](https://www.ifj.org/media-centre/news/detail/category/human-rights/article/ifj-survey-two-thirds-of-women-journalists-suffered-gender-based-online-attacks.html) accessed 5 November 2020.

57 See <https://cpj.org/2019/09/canada-usa-female-journalist-safety-online-harassment-survey> accessed 23 November 2020.

58 Demos found that '[j]ournalism is the only category where women received more abuse than men, with female journalists and TV news presenters receiving roughly three times as much abuse as their male counterparts'. 'Male Celebrities Receive More Abuse on Twitter than Women' (Demos, 24 August 2014) <https://demos.co.uk/press-release/demos-male-celebrities-receive-more-abuse-on-twitter-than-women-2> accessed 5 November 2020.

59 Danielle Keats Citron, 'Misogynistic Cyber Hate Speech' (2011) University of Maryland Faculty Scholarship [http://digitalcommons.law.umaryland.edu/fac\\_pubs/1144](http://digitalcommons.law.umaryland.edu/fac_pubs/1144) accessed 5 November 2020.

60 International Women's Media Foundation (IWMF) and Trollbusters, 'Attacks and Harassment. The Impact on Female Journalists and Their Reporting' (2018) [www.iwmf.org/wp-content/uploads/2018/09/Attacks-and-Harassment.pdf](https://www.iwmf.org/wp-content/uploads/2018/09/Attacks-and-Harassment.pdf) p 22 accessed 5 November 2020.

61 See n 2 above.



- the typically low rates of successful prosecutions for gender-based violence against women, in particular sexual violence.

48. This context contributes to the under-reporting of attacks by women journalists, the resulting denial of effective prevention, protection and prosecution measures, and a climate of impunity. It may also contribute to women journalists' resorting to self-censorship as a form of self-protection, ranging from the deactivation of their social media accounts, the use of professional pseudonyms or even withdrawing from the profession entirely.
49. Since 2012, the resolutions adopted at both the UN General Assembly and UNHRC have progressively highlighted the need to address the specific threats faced by women journalists, and take a gender-responsive approach to measures addressing the safety of journalists.<sup>62</sup>
50. Gender-sensitive investigative protocols should be implemented to encourage reporting and ensure effective investigations into gender-specific attacks.<sup>63</sup>

## **2) *Persistent impunity***

51. The issue of impunity for attacks against journalists remains widespread, with only 131 cases of journalists' killings reported by Member States as being resolved since 2006, representing an overall impunity rate of 88 per cent. There is a very slender improvement of the impunity rate over the years, although this cannot yet be taken as an established trend.<sup>64</sup> At the same time, the percentage of responses by Member States to requests by UNESCO for information on judicial follow-up to killings has declined in recent years: from a 74 per cent response rate in 2017, the figure dropped to 61 per cent in 2019.
52. The root causes of impunity are varied, but overall trends indicate that impunity rules in countries experiencing armed conflict, as well as countries with strong criminal networks and high rates of corruption, combined with weak legal systems. The 13 countries on CPJ's 2019 Global Impunity Index for attacks on journalists account for more than three-quarters (222) of the global total of unsolved murders of journalists for the index period.<sup>65</sup> All 13 have featured multiple times since CPJ first compiled the index in 2008, and seven have appeared every year:

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62 Art 19, Ending Impunity Acting on UN Standards on the Safety of Journalists, 2019, pp 18–19.

63 UNHRC, Resolution 39/6, op cit, at operational para 9g. UN General Assembly, Resolution 72/175, op cit, at operational paras 11f and 11g.

64 CPJ: During the ten-year index period ending 31 August 2019, 318 journalists were murdered for their work worldwide and in 86 per cent of those cases, no perpetrators have been successfully prosecuted. Last year, CPJ recorded complete impunity in 85 per cent of cases. Historically, this number has been closer to 90 per cent; the past two years reflect a small improvement. See n 3 above.

65 See n 3 above.

- Afghanistan;
- Bangladesh;
- Brazil;
- India;
- Iraq;
- Mexico;
- Nigeria;
- Pakistan;
- Philippines;
- Russia;
- Somalia;
- South Sudan; and
- Syria.

53. These 13 countries represent a mix of conflict-ridden regions and more stable countries where criminal groups, politicians, government officials and other powerful actors resort to violence to silence critical and investigative reporting. CPJ found that unchecked corruption, ineffective institutions and lack of political will to pursue robust investigations are all factors behind impunity.<sup>66</sup>

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<sup>66</sup> *Ibid.*

## IV. The need for effective investigations

54. In the last decade, there has been increased international recognition that impunity for attacks against journalists needs to be tackled. This has manifested itself in different efforts and initiatives. Internationally, resolutions have been adopted by the UN Security Council, General Assembly and UNHRC. These resolutions reiterate and explicitly articulate states' obligations to investigate such attacks and hold perpetrators accountable. They also mandate the UN Secretary-General, as well as UN agencies, to report on progress in tackling violence against journalists. New coalitions involving States, civil society and the media have emerged to ensure a more coordinated response to the protection of journalists.

### 1) *The duty to investigate*

55. Threats and attacks against journalists violate a wide range of human rights norms established in both treaty law and customary international law. Attacks on journalists often violate the right to life, the right to liberty and security of person, the right to a fair trial, the right to equality before the law, the right to recognition before the law and rights to privacy, family and home. Attacks against journalists may also violate fundamental prohibitions against torture; cruel, inhuman or degrading treatment or punishment; and enforced disappearance. In addition to constituting human rights violations, certain conduct can amount to international crimes, including killing, torture and enforced disappearance. Under international humanitarian law, journalists are entitled to all the protections afforded to civilians in times of conflict, and an intentional attack against journalists constitutes a war crime.<sup>67</sup>

56. A State's obligation to investigate human rights violations and to provide an effective remedy is well-established in international human rights treaties, international principles and relevant commentary.

57. It is provided for in Article 2(3) of the International Covenant on Civil and Political Rights (ICCPR), which states that:

'Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

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67 The International Committee of the Red Cross (ICRC) has stated that the obligation of states to investigate war crimes, whether committed by their nationals or armed forces or on their territory, or within their competence over which they have jurisdiction under the principle of universal jurisdiction, constitutes a rule of Customary International Law applicable to both international armed conflicts and internal armed conflicts. Rule No 158 in Jean Marie Henckaerts and Louise Doswald-Beck, Customary International Humanitarian Law vol I: Ruyles, Ed ICRC, p 607.

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.'

58. The UN Human Rights Committee General Comment No 31 provides further guidance on this obligation, stating that 'in addition to effective protection of Covenant rights States Parties must ensure that individuals also have accessible and effective remedies to vindicate those rights' and 'a failure by a State Party to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant'.<sup>68</sup> It further stipulates that required reparation could include 'restitution, rehabilitation and measures of satisfaction, such as public apologies, public memorials, guarantees of non-repetition and changes in relevant laws and practices, as well as bringing to justice the perpetrators of human rights violations'.<sup>69</sup>
59. Where torture is concerned, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment contains an explicit obligation on the part of signatory States to prosecute persons alleged to have committed torture in its territory.<sup>70</sup> The UN Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the 'Istanbul Protocol')<sup>71</sup> sets out specific guidelines on how to conduct effective legal and medical investigations into allegations of torture and ill-treatment.<sup>72</sup>
60. In relation to violations of the right to life,<sup>73</sup> the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions<sup>74</sup> state that there must be a 'thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases

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68 UN Human Rights Committee, General Comment No 31 – Nature of the General Legal Obligation Imposed on States Parties to the Covenant (Art 2), CCPR/C/21/Rev.1/Add.13 (2004), at 15.

69 *Ibid*, at 16.

70 Art 7, Convention Against Torture.

71 See [www.ohchr.org/Documents/Publications/training8Rev1en.pdf](http://www.ohchr.org/Documents/Publications/training8Rev1en.pdf) accessed 5 November 2020.

72 The Istanbul Protocol was submitted to the UN High Commissioner for Human Rights on 9 August 1999. Both the UN General Assembly and the then UN Commission on Human Rights (since 2006, the UNHRC) have strongly encouraged states to reflect upon the principles in the protocol as a useful tool to combat torture. On 23 April 2003, the UN Commission on Human Rights, in its resolution on human rights and forensic science, drew the attention of governments to these principles as a useful tool in combating torture. Likewise, reference was made to the Istanbul Protocol in the resolution on the competence of national investigative authorities in preventing torture. In addition to recognition by the UN system, the Istanbul Protocol has also been adopted by several regional bodies. The ACHPR concluded that investigations of all allegations of torture or ill-treatment, shall be conducted promptly, impartially and effectively, and be guided by the Istanbul principles. The EU has referred to the Istanbul Protocol in its Guidelines to EU Policy towards Third Countries on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment adopted by the General Affairs Council in 2001.

73 Art 6, ICCPR.

74 UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, Recommended by Economic and Social Council Resolution 1989/65 of 24 May 1989.

where complaints by relatives or other reliable reports suggest unnatural death in the above circumstance'.<sup>75</sup> The principles also require that: 'Families of the deceased and their legal representatives shall be informed of, and have access to, any hearing as well as to all information relevant to the investigation, and shall be entitled to present other evidence'.<sup>76</sup>

61. As a complement to the principles, the UN published the Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (the 'Minnesota Protocol') to articulate clear guidelines on how to handle evidence, the crime scene and the investigation more broadly.<sup>77</sup> The Minnesota Protocol, revised in 2016, states that under international law, the duty to investigate a potentially unlawful death entails an obligation that the investigation be: (1) prompt; (2) effective and thorough; (3) independent and impartial; and (4) transparent.<sup>78</sup>
62. Most recently, the UN Human Rights Committee General Comment No 36 has noted that:

'An important element of the protection afforded to the right to life by the Covenant is the obligation on the States parties, where they know or should have known of potentially unlawful deprivations of life, to investigate and, where appropriate, prosecute such incidents including allegations of excessive use of force with lethal consequences... *Investigations and prosecutions of potentially unlawful deprivations of life should be undertaken in accordance with relevant international standards, including the Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016), and must be aimed at ensuring that those responsible are brought to justice, at promoting accountability and preventing impunity, at avoiding denial of justice and at drawing necessary lessons for revising practices and policies with a view to avoiding repeated violations.*

Investigations should explore, inter alia, the legal responsibility of superior officials with regard to violations of the right to life committed by their subordinates. Given the importance of the right to life, States parties must generally refrain from addressing violations of Article 6 merely through administrative or disciplinary measures, and a criminal investigation is normally required, which should lead, if enough incriminating evidence is gathered, to a criminal prosecution... *Investigations into allegations of violations of Article 6 must always be independent, impartial, prompt, thorough, effective, credible and transparent...* Where relevant, the investigation should include an autopsy

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<sup>75</sup> *Ibid*, at 9.

<sup>76</sup> *Ibid*, at 16.

<sup>77</sup> Office of the UN High Commissioner for Human Rights, The Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016), New York/Geneva, 2017. The 2016 updated protocol can be found at [www.ohchr.org/Documents/Publications/MinnesotaProtocol.pdf](http://www.ohchr.org/Documents/Publications/MinnesotaProtocol.pdf) accessed 5 November 2020.

<sup>78</sup> *Ibid*, at 22.

of the victim's body, whenever possible, in the presence of a representative of the victim's relatives...<sup>79</sup> [emphasis author's own].

63. In addition, the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985) affirmed the right to remedies for domestic crimes, while the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (2005) ('UN Basic Principles and Guidelines')<sup>80</sup> affirmed the right to an effective remedy for victims of international crimes. The UN Basic Principles and Guidelines state that the obligation to respect human rights laws includes the duty to:

(a) Take appropriate legislative and administrative and other appropriate measures to prevent violations;

(b) Investigate violations effectively, promptly, thoroughly and impartially and, where appropriate, take action against those allegedly responsible in accordance with domestic and international law;

(c) Provide those who claim to be victims of a human rights or humanitarian law violation with equal and effective access to justice, as described below, irrespective of who may ultimately be the bearer of responsibility for the violation; and

(d) Provide effective remedies to victims, including reparation, as described below.<sup>81</sup>

64. Furthermore, 'In cases of gross violations of international human rights law and serious violations of international humanitarian law constituting crimes under international law, States have the duty to investigate and, if there is sufficient evidence, the duty to submit to prosecution the person allegedly responsible for the violations and, if found guilty, the duty to punish her or him'.<sup>82</sup>

65. A victim is defined under these guidelines as, where appropriate, including 'the immediate family or dependents of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimisation'.<sup>83</sup> Victims have the right to remedies including:

a. equal and effective access to justice;

b. adequate, effective and prompt reparation for harm suffered; and

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79 UN Human Rights Committee, General Comment No 36 – on Article 6 of the International Covenant on Civil and Political Rights on the Right to Life, CCPR/C/GC/36 (2018) at 27–28.

80 General Assembly Resolution A/RES/60/147 (2005). The UN Principles on Remedy and Reparation were previously adopted by the Commission on Human Rights, under Resolution E/CN.4/RES/2005/35 (2005).

81 UN Basic Principles and Guidelines at 3.

82 *Ibid*, at 4.

83 *Ibid*, at 8.

- c. access to relevant information concerning violations and reparation mechanisms.
66. International jurisprudence on the right to a remedy has evolved to require the following of this obligation on States:
- a. promptness and effectiveness;<sup>84</sup>
  - b. independent and not subject to interference by authorities against whom the complaint is brought;<sup>85</sup>
  - c. accessibility, including access to legal assistance;<sup>86</sup>
  - d. cessation and reparation;<sup>87</sup>
  - e. investigation;<sup>88</sup> and
  - f. judicial remedy.<sup>89</sup>
67. The State's obligation to investigate is also provided for by various regional treaties. For example, Article 2 of the European Convention on Human Rights (ECHR) entails a procedural obligation on States to conduct an effective investigation in circumstances where there has been killing of individuals by force used by State agents.<sup>90</sup> Subsequent decisions by the European Court for Human Rights provide insights into elements that the court would consider in assessing if the obligation has been met.
- In *Gongadze v Ukraine*, the court found the Ukrainian authorities in violation of Article 2 of the ECHR for failing to conduct an effective investigation as 'authorities were more preoccupied with proving the lack of involvement of high-level State officials in the case than discovering the truth about the circumstances of the disappearance and death' of journalist Georgiy Gongadze, who covered politically sensitive topics and was murdered in 2000 outside Kyiv.<sup>91</sup>

84 See n 66 above. See also *Mayagna (Sumo) Awas Tigni Community v Nicaragua*, IACtHR, Judgment of 31 August 2001, Series C No 79, at 112 in which the Inter-American Court made reference to the 'right of every person to simple and rapid remedy'.

85 See n 66 above.

86 See UN Human Rights Committee, Concluding observations on Poland, UN Doc CCPR/CO/82/POL (2004), at 14.

87 See n 66 above.

88 *Ibid.*

89 The UN Human Rights Committee in its jurisprudence has required judicial remedies where there has been a serious violation of the ICCPR. Eg, in *F Birindwa ci Bithashwiwa and E Tshisekedi wa Mulumba v Zaire*, the committee stated that the state had to ensure the applicants could effectively challenge violations before a court of law: *F Birindwa ci Bithashwiwa and E Tshisekedi wa Mulumba v Zaire*, Human Rights Committee Communication 241/1987, UN Doc CCPR/C/37/D/241/1987 (1989), at 14. This right to a judicial remedy is codified in Art 25 of the American Convention on Human Rights. The ACHPR has also stated that an effective remedy generally requires a judicial remedy, as the right includes a remedy by competent national tribunals: AfrComHPR, Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, 2003, Principle C(a).

90 First recognised in *McCann and Others v the United Kingdom*, No 18984/91, 27 September 1995, Eur Ct HR.

91 *Gongadze v Ukraine*, 34056/02, 8 November 2005, para 175 et al.

- In *Dink v Turkey*, the court held that the Turkish Government violated articles 2 (Right to Life), 10 (Freedom of Expression) and 13 (Right to an Effective Remedy) of the ECHR when authorities failed to protect journalist Firat Dink, resulting in his murder. Dink was an outspoken member of the Armenian minority in Turkey and was murdered for his writings. The court found that Turkish authorities were aware of an assassination plot preceding Dink's murder and did not act on the information. Further, the court found that states have a positive obligation to create a favourable environment for participation in public debate.<sup>92</sup>
- In *Mazepa v Russia*, the court found that the Russian Federation had 'failed to take adequate investigatory steps to find the person or persons who had commissioned the murder' of investigative journalist Anna Politkovskaya.<sup>93</sup>

68. In addition, the Inter-American Convention on the Forced Disappearance of Persons creates an explicit obligation on States to prosecute those who are alleged to have orchestrated forced disappearances.<sup>94</sup> The Inter-American Court of Human Rights has also highlighted states' duty to ensure adequate and effective investigations of certain violations, including the right to freedom of expression.<sup>95</sup> It has noted that the duty to investigate 'becomes particularly compelling and important in view of the seriousness of the crimes committed and the nature of the rights wronged', since the corresponding duty to investigate and punish those responsible has become *jus cogens*.<sup>96</sup> In cases of extrajudicial execution, forced disappearance, torture and other serious human rights violations, the Inter-American Court of Human Rights has considered that the realisation of a prompt, serious, impartial and effective investigation is a fundamental element and a condition for the protection of certain rights that are affected or annulled by these situations, such as the right to personal liberty, humane treatment and life.
69. The African Court on Human and Peoples' Rights,<sup>97</sup> issued a ruling in June 2015, ordering the Government of Burkina Faso to reopen the investigation into the killing of journalist Norbert Zongo and three others 17 years earlier. In its ruling, the court examined the many flaws of the investigative procedure and found that Burkina Faso 'failed to act with due diligence in seeking, trying and judging the

92 *Dink v Turkey*, 2668/07, 6102/08, 30079/08, 7072/09 and 7124/09, 14 September 2010, para 82 et al.

93 *Mazepa and Others v Russia*, 15086/07, 17 July 2018, para 69 et al.

94 Art 1.

95 See, eg, Case of the Pueblo Bello Massacre v Colombia, para 142; Case of *Heliodoro Portugal v Panamá*, para 115; and Case of *Zambrano Vélez et al v Ecuador*, para 110.

96 Case of *La Cantuta v Perú*, Merits, Reparations and Costs. Judgment of 29 November 2006. Series C No 162, para 157.

97 Created in 1998 to ensure the protection of human rights on the African continent, the African Court of Human and Peoples' Rights has jurisdiction over all cases and all disputes concerning the interpretation and application of the African Charter on Human and Peoples' Rights and any other relevant human rights instrument ratified by the states concerned. In operation since 2006, its decisions are binding. To date, 27 states have ratified the Protocol to the African Charter establishing the African Court, but only seven countries, including Burkina Faso, have made a special declaration under Art 34.6 of the protocol, which allows individuals and NGOs to appeal directly to the court. For more background, see International Federation for Human Rights, 'Norbert Zongo Case: The African Court Recognizes the Responsibility of the State of Burkina Faso in the Denial of Justice for the Victims', 15 April 2014 [www.refworld.org/docid/5391b72223.html](http://www.refworld.org/docid/5391b72223.html) accessed 5 November 2020.



assassins of Norbert Zongo and his companions' and as a result violated 'the rights of the Applicants to be heard by competent national courts'. Moreover, the court decided that Burkina Faso had violated the right of the freedom of expression of journalists insofar of its 'failure in the investigation and prosecution of the murderers of Norbert Zongo, caused fear and worry in media circles'.<sup>98</sup>

## 2) ***Increasing emphasis on the duty to investigate attacks on journalists***

70. In 2013, the UN General Assembly adopted its first resolution focused on the safety of journalists and the issue of impunity, which urged Member States to implement definite measures to counter the culture of impunity and proclaimed 2 November as the 'International Day to End Impunity for Crimes against Journalists'.<sup>99</sup> In particular, the resolution called on states to 'do their utmost to prevent violence against journalists and media workers, to ensure accountability through the conduct of impartial, speedy and effective investigations into all alleged violence against journalists and media workers falling within their jurisdiction and to bring the perpetrators of such crimes to justice and ensure that victims have access to appropriate remedies'. The resolution also called on states to dedicate 'the resources necessary to investigate and prosecute such attacks'.<sup>100</sup>
71. Since then, resolutions and decisions to promote the safety of journalists and calling for more effective investigations into attacks on journalists have been adopted at regular intervals at the UN General Assembly, UN Security Council, UNESCO's governing bodies and the UNHRC.<sup>101</sup>

### **Timeline and key aspects of UN resolutions dealing with the safety of journalists**

**2006:** UN Security Council Resolution 1738 (S/Res/1738): first resolution by the Security Council condemning attacks against journalists in situations of armed conflict and requesting that the UN Secretary-General include a sub-item on the safety of journalists in his annual reports to the Security Council on the protection of civilians in armed conflict.

**2012:** UNHRC Resolution 21/2 on the safety of journalists (A/HRC/RES/21/2): urges Member States to promote a safe and enabling environment for journalists, including through dedicating necessary resources to investigate and prosecute attacks against them.

98 The full judgment can be read at [www.african-court.org/en/images/Cases/Judgment/Nobert%20Zongo%20Judgment-%20English.pdf](http://www.african-court.org/en/images/Cases/Judgment/Nobert%20Zongo%20Judgment-%20English.pdf) accessed 5 November 2020.

99 See n 10 above.

100 *Ibid*, paras 5–6.

101 See table below for the main resolutions at the UN Security Council, General Assembly and UNHRC. For key resolutions adopted at UNESCO's Executive Board, see n 2 above, Annex B.

**2013:** UN General Assembly Resolution 68/163 on the safety of journalists and the issue of impunity (A/RES/68/163): first General Assembly resolution on the safety of journalists and the issue of impunity. Urges Member States to conduct impartial, speedy and effective investigations, and to bring the perpetrators of such crimes to justice. Proclaims 2 November as the International Day to End Impunity for Crimes against journalists. Invites UN bodies to create focal points to implement the UN Plan of Action.

**2014:** UNHRC Resolution 27/5 on the safety of journalists (A/HRC/RES/27/5): urges Member States to bring perpetrators of violence against journalists, including those who command, conspire to commit, aid and abet or cover up such crimes to justice, and to ensure that victims and their families have access to appropriate remedies. The resolution calls on states to implement a number of strategies to counter impunity, such as the formation of special investigative units or independent commissions, the appointment of special prosecutors, and the adoption of specific protocols and methods of investigation.

**2014:** UN General Assembly Resolution 69/185 on the safety of journalists and the issue of impunity (A/RES/69/185): urges states to ensure accountability for threats and attacks against journalists and media workers through the conduct of impartial, speedy, thorough, independent and effective investigations into all alleged violence, and calls upon States to create and maintain, in law and practice, an enabling environment for journalists.

**2015:** UN Security Council Resolution 2222 (S/Res/2222): urges all parties involved in armed conflict to respect the independence and rights of journalists and media professionals, and to take appropriate steps to ensure accountability for crimes committed against journalists working in armed conflicts. Resolution also affirms that UN peacekeeping operations should report on specific acts of violence against journalists in situations of armed conflict.

**2015:** UN General Assembly Resolution 70/162 on the safety of journalists and the issue of impunity (A/RES/70/162): calls on states to implement more effectively the applicable legal framework for the protection of journalists and media workers in order to combat impunity. It also highlights the need to improve cooperation and coordination at the international and regional levels, including through technical assistance and capacity building, with regard to helping improve the safety of journalists.

**2016:** UNHRC Resolution 33/2 on the safety of journalists (A/HRC/RES/33/2): calls on states to ensure that measures to combat terrorism do not hinder the work and safety of journalists. It emphasises that in the digital age, encryption and anonymity tools have become vital for many journalists to exercise their work freely. For the first time, the resolution not only 'acknowledges' but specifically condemns attacks against women journalists.

**2017:** UN General Assembly Resolution 72/175 on the safety of journalists and the issue of impunity (A/RES/72/175): condemns attacks against journalists and media workers, and specifically condemns attacks on women journalists, including sexual and gender-based discrimination and violence, intimidation and harassment, online and offline. It calls on states to implement more effectively the legal framework for the protection of journalists and media workers, and recognises the decision of the Secretary-General to mobilise a network of focal points throughout the UN system to enhance the safety of journalists.

**2018:** UNHRC Resolution on the promotion, protection and enjoyment of human rights on the internet (A/HRC/RES/38/7): emphasises the risks with regard to the safety of journalists in the digital age, in particular the targeting of journalists through unlawful or arbitrary surveillance and/or interception of communications. It also condemns online attacks against women and calls for gender-sensitive responses that take into account the particular forms of online discrimination.

**2018:** UNHRC Resolution on the safety of journalists (A/HRC/RES/39/6): condemns attacks against journalists and media workers and expresses grave concern that the vast majority of these crimes go unpunished. Calls upon states to strengthen national data collection, analysis and reporting on the number of verified cases of killings and other harmful acts against journalists and associated media personnel in accordance with Sustainable Development Indicator 16.10.1. Resolution calls on states to tackle gender-based violence, threats and harassment against women journalists, online and offline. It also urges states to put in place safe gender-sensitive measures and investigative procedures in order to encourage women journalists to report attacks against them.

**2019:** UN General Assembly Resolution 74/157 on the safety of journalists and the issue of impunity (A/RES/74/157): similar to previous General Assembly resolutions on the topic, condemns attacks against journalists and media workers, and specifically condemns attacks on women journalists. It invites States to share information on a voluntary basis on the status of investigations into attacks and violence against journalists, including in response to requests by UNESCO. It also encourages the Secretary-General to further intensify his efforts regarding the safety of journalists and media workers.

### **3) *Guidance on independent and effective investigations of crimes affecting freedom of expression***

72. In 2012, the four international and regional mandates on freedom of expression (the UN Special Rapporteur on freedom of opinion and expression, the OSCE Representative on Freedom of the Media, the OAS Special Rapporteur on Freedom of Expression and the ACHPR Special Rapporteur on Freedom of Expression and

Access to Information) gave detailed guidance on what independent and effective investigations should entail for crimes that affect freedom of expression.<sup>102</sup>

### **The joint declaration on crimes against freedom of expression: guidance on what independent and effective investigations means**

- Independence requires investigating authorities to be entirely independent from any individual or public body implicated in the crime. When there are credible allegations of the involvement of State agents, the investigation should be carried out by an authority outside of the jurisdiction or sphere of influence of those authorities, and the investigators should be able to explore all allegations fully.
- Effectiveness requires establishing a connection between a perpetrator's motive and the journalists' work early on, and looking to hold instigators, as well as direct perpetrators, accountable. An effective system should be put in place for receiving and processing complaints regarding investigations by law enforcement officials of crimes against freedom of expression, which is sufficiently independent of those officials and their employers, and which operates in a transparent manner.
- Where the seriousness of the situation warrants it, in particular in cases of frequent and recurrent crimes against freedom of expression, consideration should be given to establishing specialised and dedicated investigative units – with sufficient resources and appropriate training to operate efficiently and effectively – to investigate crimes against freedom of expression.
- The authorities should make all reasonable efforts to expedite investigations, including by acting as soon as an official complaint or reliable evidence of an attack against freedom of expression becomes available.
- The victims, or in case of death, abduction or disappearance, the next of kin, should be afforded effective access to the procedure.
- Civil society organisations should be able to lodge complaints about crimes against freedom of expression – of particular importance in cases involving killings, abductions or disappearances where the next of kin are unwilling or unable to do so – and intervene in the criminal proceedings.
- Investigations should be conducted in a transparent manner, subject to the need to avoid prejudice to the investigation.
- Restrictions on reporting on court cases involving prosecutions of crimes against freedom of expression should be limited to highly exceptional cases where clearly

<sup>102</sup> Joint declaration on crimes against freedom of expression [www.osce.org/representative-on-freedom-of-media/91595](https://www.osce.org/representative-on-freedom-of-media/91595) accessed 5 November 2020.

overriding interests prevail over the particularly strong need for openness in such cases.

- In addition to criminal investigations, disciplinary proceedings should be carried out where there is evidence that public officials have committed crimes against freedom of expression in the course of their professional duties.
- Where crimes against freedom of expression are committed, the victims should be able to pursue appropriate civil remedies, regardless of whether or not a criminal act has been established.

## V. Existing efforts to promote effective investigations: insufficient progress

73. A number of international, regional, and national mechanisms and initiatives have been set up to address attacks on journalists and they operate across different types of activities: (1) prevention activities to try to pre-empt attacks; (2) protection mechanisms to enable a safer environment for journalists, as well as immediate measures to protect journalists at risk by providing them with urgent shelter or relocation; (3) monitoring mechanisms that report on attacks on journalists and in some cases on the progress of investigations into such attacks; and (4) complaint mechanisms, as well as investigative efforts to determine responsibility for attacks.
74. These efforts have been better at raising awareness of the problem than at tackling impunity. There may be better data on the number of attacks on journalists, and more entities reporting and criticising such attacks, but there are still too few mechanisms actually investigating the attacks, reporting on progress of investigations or holding states accountable for failing to investigate effectively.
75. This section overviews some of the key existing efforts at monitoring and investigating attacks against journalists. While it touches briefly on activities that fall on the prevention and protection spectrum, its main focus remains on efforts that lead to more effective investigations.

### 1) *UN: increased reporting on attacks but little investigating*

76. In 2012, the UN adopted its UN Plan of Action on the Safety of Journalists and the Issue of Impunity (the 'UN Plan of Action'), a systematic UN-wide plan to work towards a safe environment for journalists and media workers. It covers both conflict and non-conflict situations. The UN Plan of Action provides an overarching framework for cooperation between all relevant stakeholders, including UN bodies, national authorities, media actors, and national, regional and international organisations.
77. The need to report on attacks on journalists has been recognised in the 2030 Agenda for Sustainable Development Goals (SDGs), in particular in Target 16.10, which aims to ensure public access to information. As part of achieving this target, countries are required to report in what is known as Indicator 16.10.1 on the number of verified cases of killing, kidnapping, enforced disappearances, arbitrary detention and torture against journalists, associated media personnel, human rights activists and trade unionists.<sup>103</sup>

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<sup>103</sup> For more details about Indicator 16.10.1, the methodology that is meant to be used to gather the data and UN agencies in charge of following up, see <https://unstats.un.org/sdgs/metadata/files/Metadata-16-10-01.pdf> accessed 5 November 2020.

78. Various UN mechanisms have scaled up their efforts to report on attacks on journalists, but little progress has occurred in pursuit of actual investigations. The opportunity and potential of a stronger role for existing UN mechanisms to investigate specific attacks – as opposed to just report on them – was highlighted by the investigation that the Special Rapporteur on extrajudicial, summary or arbitrary executions Callamard led into the killing of Khashoggi.

#### **A) UNESCO**

79. UNESCO is the lead UN agency on the safety of journalists and is in charge of implementing the UN Plan of Action, which proposes a number of mechanisms to combat impunity. These include incorporating this issue into country analyses and programming; working with Member States to develop and implement relevant legislation; promoting awareness among states, policy-makers and members of the press; developing emergency response plans; coordinating regular inter-agency meetings to review national and international progress; and strengthening partnerships between the UN, other intergovernmental organisations and civil society groups.

80. UNESCO does not conduct any of its own investigations into attacks on journalists but publishes information on attacks on journalists through a variety of outputs:

- Journalists' Safety Indicators (a set of indicators that track, among other issues, the problem of impunity);<sup>104</sup>
- UNESCO Director-General's biennial report on the safety of journalists and the danger of impunity;<sup>105</sup>
- annual updates in the World Trends on Freedom of Expression and Media Development reports;<sup>106</sup> and
- UNESCO's online 'observatory of killed journalists', which contains information about killings and judicial follow-up to such attacks.<sup>107</sup>

81. As part of an important follow-up mechanism, States are invited to provide information on the status of judicial enquiries into killings to UNESCO. Though the rate of responses has improved in recent years, they remain low, and the last two years have seen a decline in the percentage of state responses to UNESCO's requests for information on the status of investigations (from 74 per cent in 2017 to 61 per

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104 For more information on the Journalists' Safety Indicators, see <https://en.unesco.org/themes/safety-of-journalists/journalists-safety-indicators> accessed 5 November 2020.

105 See <https://en.unesco.org/themes/safety-journalists/dgreport> accessed 5 November 2020.

106 See <https://en.unesco.org/world-media-trends> accessed 5 November 2020.

107 The UNESCO observatory of killed journalists is accessible at <https://en.unesco.org/themes/safety-journalists/observatory> accessed 5 November 2020.

cent in 2019).<sup>108</sup> UNESCO's 'online observatory' contains the letters received by UNESCO from States, insofar as state consent has been given to make the letters publicly available. In 2019, 18 States, representing 49 per cent of all States that responded, agreed to full transparency by making their response accessible online.

82. Since 2014, to mark the International Day to End Impunity for Crimes against Journalists, UNESCO has also worked in partnership with regional human rights courts to convene an annual seminar that brings together judges and other key stakeholders from a number of regions, to facilitate the sharing of good practices in the fight against impunity.<sup>109</sup>

## **B) UN SECRETARY-GENERAL AND HIS TEAM**

83. Since the first General Assembly resolution dealing with journalists' safety and impunity in 2013, the Secretary-General has been tasked with reporting back to the General Assembly on progress in the implementation of the different resolutions dealing with journalists' safety.<sup>110</sup> His annual reports to the General Assembly provide an overview of the measures taken in promoting journalists' safety and present some general recommendations, but they contain little specific information on particular attacks against journalists or on progress in particular investigations.

84. The Secretary-General also reports to the UN Security Council about attacks on journalists in armed conflicts as part of his broader report on protection of civilians in armed conflict (pursuant to Security Council Resolutions 1738 (2006) and 2222 (2015)). In particular, UN Security Council Resolution 2222 (2015),

'[r]equests the Secretary General to include consistently as a sub item in his reports on the protection of civilians in armed conflict the issue of the safety and security of journalists, media professionals and associated personnel, including the existence of measures to protect such individuals facing an imminent threat, and to ensure that information on attacks and violence against journalists, media professionals and associated personnel and preventative actions taken to prevent such incidents is included as a specific aspect in relevant country specific reports'.<sup>111</sup>

The current reporting by the Secretary-General to the Security Council on attacks on journalists pursuant to Resolutions 1738 and 2222 does not include any follow-up reporting on whether countries have actually investigated the attacks on journalists

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108 Each year, UNESCO sends a request to Member States in which killings of journalists have been recorded requesting them to update the Director-General on the status of judicial enquiries into each case. Rates of response are then reported by UNESCO. See n 2 above, p 5.

109 UNESCO, *World Trends in Freedom of Expression and Media Development Global Report 2017/2018*, pp 147–148.

110 See, eg, the Report of the Secretary-General to the General Assembly on *The Safety of Journalists and the Issue of Impunity*, 6 August 2014, A/69/268 <https://undocs.org/A/69/268>; see n 13 above, accessed 5 November 2020.

111 UN Security Council Resolution 2222 (2015), para 19.



and there are no consequences for states or groups that fail to investigate. In his 2017 Report on the protection of civilians in armed conflict, the Secretary-General simply urged Member States to inform UNESCO of the status of judicial enquiries into killing of journalists.<sup>112</sup>

85. In August 2017, UNESCO and the Office of the UN High Commissioner for Human Rights (OHCHR) organised a consultation on strengthening the implementation of the UN Plan of Action, which has led to the Secretary-General appointing a designated official in his office, Ana Maria Menéndez, as a focal point on the safety of journalists, and establishing a network of focal points across the UN system for enhancing coordination.<sup>113</sup>
86. Under the lead of UNESCO and OHCHR, and in close consultation with the Executive Office of the Secretary-General, the enhanced network of focal points has been operational since January 2018. UN General Assembly Resolution 74/157 adopted in November 2019 requested the Secretary-General to report back to the General Assembly at its 76th session (expected to be held in 2021–2022) on the activities of the network of focal points in addressing the safety of journalists and the issue of impunity.
87. The UN Secretary-General has in the past set up international investigative bodies (in the forms of Commissions of Inquiry or Panel of Experts) to look at serious violations of international human rights and humanitarian law, but to date, the Secretary-General has not set-up any investigative body to look into attacks on journalists.<sup>114</sup> While most of the Commissions of Inquiry created by the Secretary-General came in response to a request by a state or a UN assembly of states, there is at least one precedent where the UN Secretary-General has launched an inquiry on his own initiative. In 2010, Secretary-General Ban Ki-moon set up a Panel of Experts on Accountability in Sri Lanka to advise him on ‘the modalities, applicable international standards and comparative experience relevant to the fulfilment of the joint commitment to an accountability process’.<sup>115</sup> Although the Panel of Experts was advisory in nature, it did examine closely all available information on the violations and developed concrete recommendations to pursue investigations for violations in Sri Lanka.

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112 S/2017/414, para 34.

113 OHCHR, Strengthening the Implementation of the UN Plan of Action on the Safety of Journalists and the Issue of Impunity, 2017 [www.ohchr.org/Documents/Issues/Journalists/OutcomeDocument.pdf](http://www.ohchr.org/Documents/Issues/Journalists/OutcomeDocument.pdf) accessed 5 November 2020. In November 2017, UN Secretary-General António Guterres addressed a request to appoint focal points on the safety of journalists to 14 relevant UN agencies and designated Ana Maria Menéndez as the official for the safety of journalists.

114 Eg, in 2000, Secretary-General Kofi Annan established the International Commission of Inquiry for Togo to look into allegations of extrajudicial killings in 1998 following a request by the Government of Togo to the UN Secretary-General and the Secretary-General of the Organisation of Africa Unity. In 2009, Secretary-General Ban Ki-moon set up a commission of inquiry at the request of the Pakistani Government to investigate the assassination of Pakistan’s Prime Minister Benazir Bhutto.

115 Louis Charbonneau, ‘U.N.’s Ban names advisory panel on Sri Lanka war’ Reuters (London, 22 June 2010) [www.reuters.com/article/idUSTR65L45W20100622](http://www.reuters.com/article/idUSTR65L45W20100622) accessed 5 November 2020.

88. Special Representatives of the Secretary-General, who are usually experts appointed by the UN Secretary-General to represent her/him on critical human rights issues or particular countries, can carry out country visits to investigate allegations of human rights violations, after which they often brief the Security Council. In the past, some of these briefings have included some general reporting on the safety of journalists. For example, the Special Representative of the Secretary-General for Somalia expressed concern in his March 2017 briefing about attacks on journalists.<sup>116</sup>

### **C) HUMAN RIGHTS COUNCIL AND ITS MECHANISMS**

89. The safety of journalists is regularly raised in the context of the universal periodic review of a country's human rights record at the UNHRC or during statements issued by countries as part of what is known as the High-Level Segment of the Human Rights Council.<sup>117</sup>
90. The OHCHR monitors the situation of journalists globally and publishes its own reports on the safety of journalists. In 2013, it published a thematic report focused on the safety of journalists, which contained several recommendations to strengthen investigations, including the designation of national investigative units or mechanisms, specifically for crimes against journalists, and the creation of databases or other information-gathering and sharing tools to record threats and incidents of violence against journalists.<sup>118</sup>
91. The Special Procedures of the Human Rights Council, in particular the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Working Group on Arbitrary Detention; and the Working Group on Enforced or Involuntary Disappearances, perform a key role in monitoring attacks on journalist including through:
- contacting States concerning information received regarding alleged violations of the rights of journalists;
  - undertaking country visits to analyse the human rights situation at the national level;

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116 See <https://unsom.unmissions.org/srsg-michael-keating-briefing-security-council-somalia> accessed 5 November 2020.

117 OHCHR counted 84 recommendations concerning the safety of journalists made to states during the 26th, 27th and 28th sessions of the Working Group held in 2016 and 2017. OHCHR, *Report of the UN High Commissioner for Human Rights, Safety of Journalists*, A/HRC/39/23, para 39

118 UNHRC, *The Safety of Journalists: Report of the Office of the United Nations High Commissioner for Human Rights*, A/HRC/24/23, 1 July 2013 [http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/24/23](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/24/23) accessed 5 November 2020.

- making public statements; and
  - submitting reports to the UNHRC and the General Assembly.
92. Special Rapporteurs can play an important role in promoting more effective investigations through their close examination of the actual investigative process or lack thereof. Kaye, the former Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression (between August 2014 and July 2020) and Callamard, Special Rapporteur on extrajudicial, summary or arbitrary executions, have both in recent years undertaken such work which highlights the capacity of the UN to play a more decisive role in monitoring investigations.
93. The investigation that the Special Rapporteur on extrajudicial, summary or arbitrary executions Callamard led into the killing of Saudi journalist Khashoggi was a particularly powerful example of human rights inquiries advancing investigations and promoting accountability more broadly. While the Special Rapporteur recognised that her inquiry ‘does not amount to a criminal investigation whose findings could be presented in a court of law’,<sup>119</sup> she did review available evidence, relied on forensic experts and even named possible suspects, thus shining a spotlight on individual criminal responsibility and making it harder for any criminal investigation to ignore or conveniently omit certain suspects.<sup>120</sup> The naming of individual suspects can also contribute to other accountability mechanisms – some of which were used in response to Khashoggi’s killing – such as the imposition of targeted ‘Magnitsky’ sanctions on perpetrators. This precedent shows that UN human rights monitoring bodies could play a more meaningful role in investigating attacks on journalists if they were provided with the right support.

**Example 1:** Joint mission to Mexico by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the IACHR’s Special Rapporteur for freedom of expression

- In December 2017, Kaye, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and Edison Lanza, the IACHR’s Special Rapporteur for freedom of expression, undertook a joint mission to Mexico to examine the safety of journalists.<sup>121</sup>
- The special rapporteurs did not just examine attacks on journalists but looked closely at the investigations and lack of progress. They examined the response of Mexican authorities, assessed their effectiveness in investigating the attacks, and met with key stakeholders, ranging from federal to local officials, as well as journalists and civil society representatives.<sup>122</sup>

119 Callamard report, para 49.

120 *Ibid*, para 34.

121 See [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22484&LangID=E](https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22484&LangID=E) accessed 5 November 2020.

122 *Ibid*, paras 31–41.

- This allowed them to develop recommendations to strengthen investigations, notably with respect to the special prosecutor's unit Fiscalía Especial para la Atención de Delitos Cometidos contra la Libertad de Expresión (FEADLE) that had been set up to investigate and prosecute crimes against media freedom. Some of their recommendations to FEADLE included the need to establish a witness protection programme, incorporating a gender focal point, and prioritising the investigation of a series of cases of journalists 'whose contribution was fundamental to their communities'.

**Example 2:** Investigation of the Special Rapporteur on extrajudicial, summary or arbitrary executions investigation of the unlawful death of Khashoggi

- Callamard's investigation into the killing of Khashoggi is an important example of how human rights inquires can play an essential role in strengthening investigations into attacks on journalists and promoting accountability more broadly. The Special Rapporteur's work was essential in promoting accountability through the following actions:
- Review available evidence and rely on forensic experts: The Special Rapporteur's report did not just evaluate the progress of the investigation but actually reviewed the evidence. In order to do so, she relied on forensic experts, as well as 'major crimes investigation consultants'.<sup>123</sup>
- Tackle criminal responsibility of perpetrators: As the Special Rapporteur's report highlights, 'Fact finding into killings of human rights defenders or journalists cannot confine itself to identifying State responsibilities alone. To the extent possible, such fact-finding should establish the criminal responsibility of the perpetrators of the crime and of the crime's intellectual authors'.<sup>124</sup> After weighing different considerations, the Special Rapporteur named suspects, thus shining a spotlight on individual criminal responsibility and making it harder for any criminal investigation to ignore or avoid certain suspects.

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123 See n 117 above, para 34.

124 *Ibid*, para 49.

## 2) *Regional efforts*

94. Regional organisations, including the African Union, ACHPR, Council of Europe, EU, OSCE,<sup>125</sup> OAS and IACHR,<sup>126</sup> have established mechanisms tasked with promoting and protecting the right to freedom of expression, which usually include the safety of journalists as a core issue.
95. Intergovernmental cooperation within Africa, the Americas and Europe has seen significant efforts to promote and secure the safety of journalists, including through strengthening mechanisms for investigating attacks on journalists. But there are gaps concerning the existence of intergovernmental organisations in the Arab and Asia Pacific regions that could take up the issue of safety and impunity.

### A) THE COUNCIL OF EUROPE AND THE EUROPEAN UNION

96. Intergovernmental cooperation within Europe has seen significant efforts to promote and secure the safety of journalists. In May 2014, the Council of the EU adopted the EU Human Rights Guidelines on Freedom of Expression Online and Offline, which stated that the EU would '[a]ppeal to State authorities to fully abide by their international obligations to effectively, promptly and in an independent manner investigate crimes [against journalists]' and '[w]here appropriate, the EU will encourage international trial observation to ensure the follow up on cases of violence and promote the fight against impunity'.<sup>127</sup>
97. The Council of Europe, the continent's leading human rights organisation, which includes 47 Member States (27 of which are members of the EU) has been particularly active in recognising the importance of journalists' safety and following relevant developments within member States. In April 2014, the Council of Europe's Committee of Ministers adopted a declaration on the protection of journalism and safety of journalists and other media actors, which called for concerted international efforts and led to the creation of an online platform for reporting infringements of freedom of expression.
98. In 2016, this was followed by the adoption of a Committee of Ministers Recommendation on the protection of journalism and safety of journalists and

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125 An OSCE Ministerial Decision on the Safety of Journalists was adopted by all 57 participating states on 7 December 2018. The decision urges 'political leaders, public officials and/or authorities to refrain from intimidating, threatening or condoning – and to unequivocally condemn – violence against journalists' and calls on participating states to 'take effective measures to end impunity for crimes committed against journalists' [www.osce.org/representative-on-freedom-of-media/405767](http://www.osce.org/representative-on-freedom-of-media/405767) accessed 5 November 2020.

126 In 2017, in Latin America and the Caribbean region, the IACHR together with the OHCHR signed a Joint Action Mechanism to Contribute to the Protection of Human Rights Defenders in the Americas, a text whose definition of human rights defenders includes journalists, OHCHR, 'Launch of the Joint Action Mechanism to Contribute to Protection of Human Rights Defenders in the Americas' (2017) [www.ohchr.org/FR/NewsEvents/Pages/DisplayNews.aspx?NewsID=22282&LangID=E](http://www.ohchr.org/FR/NewsEvents/Pages/DisplayNews.aspx?NewsID=22282&LangID=E) accessed 5 November 2020.

127 See [www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/EN/foraff/142549.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/142549.pdf) para 29, accessed 5 November 2020.

other media actors,<sup>128</sup> which includes a set of guidelines that urged member States to review relevant domestic laws and practices in relation to media freedom and outlined specific measures to prevent violations of media freedom and protect journalists. The guidelines recommend that *'investigations must be effective in order to maintain public confidence in the authorities' maintenance of the rule of law, to prevent any appearance of collusion in or tolerance of unlawful acts'*. The guidelines also recommend that *'investigations should be subject to public oversight, and in all cases the victim's next of kin must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests'*.

99. To further assist member States, in 2020 the Council of Europe published an Implementation guide 'How to protect journalists and other media actors?'<sup>129</sup> containing concrete suggestions for the implementation of the Recommendation. The Implementation Guide offers a selection of existing practices developed in member States and other jurisdictions to enhance the protection of journalists and provides references to the relevant case law of the European Court of Human Rights and to other relevant sources. It also provides concrete indicators and a self-assessment tool allowing member States to independently review the state of implementation of the Recommendation in their respective jurisdictions. Specifically, the Implementation Guide provides clear requirements for an effective investigation and operational requirements to stem impunity as well as remedies available to journalists and their next of kin.

**(i) *The Platform to Promote the Protection of Journalism and Safety of Journalists***

100. In 2015, the Council of Europe launched a platform to promote the protection of journalism and safety of journalists, which monitors and provides early warning and rapid response to threats to media freedom and the safety of journalists across 47 Member States.<sup>130</sup> A tool for monitoring freedom of expression, the platform also provides a model that could potentially be established for other regions or globally.
101. The Platform for the Protection of Journalism and the Safety of Journalists was set up in cooperation with prominent European associations of journalists and international NGOs active in the field of freedom of expression, to facilitate the collection and dissemination of information on serious threats to media freedom and safety of journalists in the Council of Europe Member States. Its objective is to improve the protection of journalists, better address threats and violence against media professionals, and enhance the response capacity within the Council of Europe.

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128 See [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=09000016806415d9#\\_ftn1](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016806415d9#_ftn1) accessed 5 November 2020.

129 See <https://rm.coe.int/safety-implementation-guide-en-16-june-2020/16809ebc7c> accessed 5 November 2020.

130 See [www.coe.int/en/web/media-freedom/the-platform](http://www.coe.int/en/web/media-freedom/the-platform) accessed 5 November 2020.

102. The platform enables Council of Europe institutions to be alerted in a timely and systematic way on these threats and to take coordinated action when necessary. It also helps the organisation to identify trends and to propose adequate policy responses. Partner organisations submit alerts to the platform, informing the Council of Europe bodies on media freedom violations in the Member States.<sup>131</sup>

## **B) THE ORGANISATION OF AMERICAN STATES**

103. The OAS has played a proactive role in promoting the safety of journalists. In June 2017, the General Assembly of the OAS passed Resolution R86/17, which urged Member States ‘to implement comprehensive measures for prevention, protection, investigation and punishment of those responsible, as well as to put into action strategies to end impunity for crimes against journalists and share good practices’.<sup>132</sup>
104. Various bodies of the OAS have addressed the issue of impunity for crimes against journalists in the Americas. In its October 2000 Declaration of Principles on Freedom of Expression, the IACHR affirmed that violence and threats against media workers interfere with the right to freedom of expression and access to information.
105. The Inter-American Court of Human Rights has heard a number of cases related to crimes against journalists and other media workers. In its judgments, it has highlighted states’ positive obligations, such as the duty to ensure adequate investigations of certain violations, with respect to the rights laid out in the American Convention, including the right to freedom of expression.<sup>133</sup>
106. In a 2013 report, the OAS Special Rapporteur for Freedom of Expression recommended adopting preventative measures, such as freedom of expression trainings for law enforcement and security forces, ensuring impartial and effective investigations, and implementing special protective measures to protect women journalists and journalists in situations of armed conflict.<sup>134</sup>
107. The IACHR and its Office of the Special Rapporteur for Freedom of Expression created a Special Follow-Up Team for investigating the killing of three journalists from *El Comercio* newspaper who were killed on the border between Ecuador and Colombia.<sup>135</sup> The Special Follow-Up Team had four specific objectives: (1) technical advice and monitoring in the progress of the investigation and punishment of those responsible for the kidnapping and murder of the journalists; (2) accompany

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131 Today, 14 international NGOs and associations of journalists are partners to the platform. The platform allows the contributing NGOs to post alerts. Each contributing partner is responsible for information that it posts.

132 General Assembly of the OAS 2017, vol AG/doc.5580/17, para 2.

133 Case of *Perozo et al v Venezuela*, Inter-Am Ct HR (Series C) No 195, 28 January 2009, para 118 [www.corteidh.or.cr/docs/casos/articulos/seriec\\_195\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_195_ing.pdf) accessed 5 November 2020.

134 IACHR, ‘Violence Against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection, and Prosecution of Perpetrators’, 31 December 2013 [www.oas.org/en/iachr/expression/docs/reports/2014\\_04\\_22\\_Violence\\_WEB.pdf](http://www.oas.org/en/iachr/expression/docs/reports/2014_04_22_Violence_WEB.pdf) para 297 accessed 5 November 2020.

135 See [www.oas.org/en/iachr/media\\_center/PReleases/2018/235.asp](http://www.oas.org/en/iachr/media_center/PReleases/2018/235.asp) accessed 5 November 2020.

the comprehensive care plan of the victims and relatives, and keep them informed of the process; (3) technical advice and monitoring in the compliance of state obligations regarding access to information and the truth of what happened to Ecuadorian society, as well as to family members; and (4) advise and support the State in the adoption of structural measures wherever possible to avoid the repeat of future crimes.<sup>136</sup>

108. The Special Rapporteur for freedom of expression to the IACHR, in an analysis of case law across ten States in Latin America and the Caribbean, and North America, has found significant progress throughout the region in jurisprudence to protect freedom of expression.<sup>137</sup>

### C) AFRICAN REGIONAL MECHANISMS

109. In October 2002, the ACHPR adopted the 'Declaration of Principles on Freedom of Expression in Africa', which established that '[s]tates are under an obligation to take effective measures to prevent such attacks [against journalists] and, when they do occur, to investigate them, to punish perpetrators and to ensure that victims have access to effective remedies'.<sup>138</sup>
110. In 2012, the African Commission adopted Resolution 221, where it called on Somali authorities, the African Union and the international community to support the establishment of an Independent Commission of Inquiry to investigate the killings of journalists and other violent attacks against them, so as to end the culture of impunity.<sup>139</sup>
111. In June 2014, the Economic Community of West African States (ECOWAS) Court of Justice ordered the Gambia to pay \$50,000 to the family of murdered editor Deyday Hydara, as compensation for failure to effectively investigate the murder, and \$10,000 for legal costs. However, there has been non-compliance by the Gambia with two earlier ECOWAS rulings: one on the disappearance of a journalist and another on the torture of a journalist.<sup>140</sup>
112. In June 2015, the African Court on Human and Peoples' Rights, created in 1998, ordered the Government of Burkina Faso to reopen the investigation into the killing of journalist Zongo and three others, 17 years earlier. The court reportedly ordered the payment of monetary damages and costs to the victim's relatives, instructed

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136 María Isabel Rivero, 'IACHR and its Office of the Special Rapporteur Installed in Quito Special Follow-Up Team for the Murder of Members of El Comercio's Journalistic Team', 26 July 2018, [www.oas.org/en/iachr/media\\_center/PReleases/2018/165.asp](http://www.oas.org/en/iachr/media_center/PReleases/2018/165.asp) accessed 5 November 2020.

137 Edison Lanza, National Case Law on Freedom of Expression. Special Rapporteur for freedom of expression to the IACHR (2016) [www.oas.org/en/iachr/expression/docs/publications/JURISPRUDENCIA\\_ENG.pdf](http://www.oas.org/en/iachr/expression/docs/publications/JURISPRUDENCIA_ENG.pdf) accessed 5 November 2020.

138 See [www.achpr.org/mechanisms/freedom-of-expression/Declaration%20of%20Principles%20on%20Freedom%20of%20Expression%20in%20Africa](http://www.achpr.org/mechanisms/freedom-of-expression/Declaration%20of%20Principles%20on%20Freedom%20of%20Expression%20in%20Africa) accessed 5 November 2020.

139 See [www.achpr.org/sessions/51st/resolutions/221](http://www.achpr.org/sessions/51st/resolutions/221) accessed 5 November 2020.

140 See <https://cpj.org/2014/06/ecowas-court-rules-gambia-failed-to-investigate-jo.php>; [www.article19.org/join-the-debate.php/150/view](http://www.article19.org/join-the-debate.php/150/view) accessed 5 November 2020.



Burkina Faso to publish its judgment widely within the country, and ordered a report on implementation within six months.<sup>141</sup>

### 3) *National efforts*

113. A number of states have announced the adoption of measures to strengthen their investigations of attacks on journalists. A detailed review of national measures and assessment of their effectiveness is beyond the scope of this report. The below provide some examples of national initiatives without commenting on their actual impact.
114. A number of countries have in recent years appointed specialised prosecutors to investigate attacks on journalists. In 2018, Iraq established a Special Investigation Unit (SIU) to investigate attacks on journalists. The SIU is part of the Ministry of the Interior and was formed with the support of UNESCO through a project funded by the Dutch Government.<sup>142</sup>
115. In Mexico, the Special Prosecutor for Crimes against Freedom of Expression reportedly has the authority to direct, coordinate and supervise investigations and, where appropriate, the prosecution of crimes committed against journalists. It is also involved in the systematisation of information regarding attacks on journalists.<sup>143</sup>
116. Guatemala's Human Rights Prosecution Section, in charge of investigating and prosecuting those accused of violating human rights, includes a specific unit for crimes against journalists.<sup>144</sup>
117. In 2013, Serbia established a commission to investigate unsolved murders of journalists, in particular to review the investigations into the killing in the 1990s of Dada Vujasinović, Slavko Ćuruvija and Milan Pantić, three prominent journalists, and to make recommendations to improve future investigations.<sup>145</sup>
118. In 2018, Brazil reinforced the process of receiving, registering and forwarding complaints that accommodate the specificities of journalists, and improved the flow of information between the National Ombudsman for Human Rights and the protection programme for journalists.<sup>146</sup>

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141 See [www.opensocietyfoundations.org/voices/african-court-orders-remedies-and-damages-case-murdered-journalist](https://www.opensocietyfoundations.org/voices/african-court-orders-remedies-and-damages-case-murdered-journalist) accessed 5 November 2020.

142 Reliefweb, 'UNESCO Supports the Minister of Interior of Iraq in Providing Protection for Media Institutions in Iraq', 6 October 2019 <https://reliefweb.int/report/iraq/unesco-supports-minister-interior-iraq-providing-protection-media-institutions-iraq> accessed 5 November 2020.

143 See n 116 above, paras 23–24.

144 See <https://mp.gob.gt/noticias/2019/10/08/mp-fortalecera-la-proteccion-a-periodistas> accessed 5 November 2020.

145 See <https://balkaninsight.com/2013/01/25/serbia-to-investigate-mystery-killings-of-journalists> accessed 5 November 2020.

146 See n 2 above, p 24.

119. There has been strong cooperation between states throughout the Latin America region in training judges and judicial officials in understanding the main issues surrounding freedom of expression, the safety of journalists and the issue of impunity, including the training of more than 5,000 judicial officials through a series of massive open online courses developed by UNESCO.<sup>147</sup> With the IACHR Special Rapporteur for freedom of expression, OHCHR has carried out workshops for prosecutors to strengthen their knowledge of international and regional standards on the safety of journalists.<sup>148</sup>

#### **4) NGO efforts: from monitoring to evidence-gathering**

120. Civil society groups are at the forefront of monitoring attacks against journalists and advocating for more effective investigations. CPJ's annual Global Impunity Index ranks countries on their response to attacks on journalists.<sup>149</sup> RSF produces the annual World Press Freedom Index, which ranks States based on an evaluation of media independence, legislative framework and overall ability of journalists to carry out their work.<sup>150</sup>
121. Different civil society initiatives, some national, other regional, track attacks on journalists and have developed crowd-sourced platforms to respond quickly to attacks on journalists. For example, Mapping Media Freedom is a crowd-sourced platform that enables anyone to upload an alert that relates to threats against journalists and media workers across Europe.<sup>151</sup> The alerts uploaded to the platform guide the work of the European Centre for Press and Media Freedom (a civil society group founded in 2015 as a watchdog of the European Charter on Freedom of the Press) and the Media Freedom Rapid Response (a project by a coalition of media freedom organisations that provides legal and practical support, public advocacy and information to protect journalists and media workers).<sup>152</sup>

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147 For background on the initiative, read UNESCO, Training Judges Online to Safeguard Journalists, June 2017 <https://en.unesco.org/courier/2017-april-june/training-judges-online-safeguard-journalists> accessed 5 November 2020.

148 See n 115 above, para 26

149 CPJ's annual Impunity Index, first published in 2008, calculates unsolved journalist murders as a percentage of each country's population. Each year, the index includes murders that occurred during a one-year period and that remain unsolved. Only nations with five or more unsolved cases are included on the index. Cases are considered unsolved when no convictions have been obtained <https://cpj.org/about/research> accessed 5 November 2020.

150 RSF's index is determined by pooling the responses of experts to a questionnaire devised by RSF. This qualitative analysis is combined with quantitative data on abuses and acts of violence against journalists during the period evaluated. The criteria evaluated in the questionnaire are pluralism, media independence, media environment and self-censorship, legislative framework, transparency and the quality of the infrastructure that supports the production of news and information <https://rsf.org/en/detailed-methodology> accessed 5 November 2020.

151 This includes physical attacks, threats of violence made online and offline, legal actions aimed at silencing critical coverage and moves to block access to independent media platforms [www.mappingmediafreedom.org/methodology](http://www.mappingmediafreedom.org/methodology) accessed 5 November 2020.

152 Media Freedom Rapid Response is organised by an alliance led by the European Centre for Press and Media Freedom (ECPMF) including Article 19, the European Federation of Journalists (EFJ), Free Press Unlimited (FPU), the Institute for Applied Informatics at the University of Leipzig (InfAI), International Press Institute (IPI) and CCI/Osservatorio Balcani e Caucaso Transeuropa (OBCT) to directly engage with and help at-risk journalists and media workers [www.mfrr.eu](http://www.mfrr.eu) accessed 5 November 2020.

122. The work of civil society has been strengthened through the creation of global networks and coalitions working for the safety of journalists. Examples include the International Civil Society Coalition on the Safety of Journalists ('ISCO SOJ Coalition'), which comprises 17 organisations,<sup>153</sup> as well as the global network of freedom of expression organisations IFEX.<sup>154</sup> These groups issue joint statements, conduct joint advocacy and in some cases even organise joint missions to contexts where journalist safety is at risk.<sup>155</sup>
123. In recent years, some civil society groups have expanded their work to include gathering evidence for purposes of criminal investigations, an area traditionally restricted to officially mandated bodies, while others have begun assisting victims in filing criminal complaints in cases of attacks against journalists. This is part of a broader trend of NGOs increasingly playing a role in collecting evidence of international crimes, and sometimes even analysing it, and then transferring it to UN mechanisms or directly to prosecuting authorities.
124. Research conducted by the University of Oxford, in partnership with the IBA and the US Holocaust Memorial Museum Simon Skjodt Center for Genocide Prevention, found that 'many actors increasingly think of a landscape where streams of information originate with small civil society groups that operate at or near the crime scenes, to major international human rights NGOs that have the resources to retain regional experts with networks of local contacts' and then 'pass through and are processed by UN mandate holders, and arrive in some form to prosecuting authorities'.<sup>156</sup>
125. When it comes to attacks on journalists, these new roles are being undertaken by a mix of well-established media freedom organisations, such as RSF, which are increasingly getting involved in evidence-gathering and preparing criminal complaints in cases of attacks on journalists,<sup>157</sup> as well as human rights organisations active in gathering evidence in conflict settings or focused on collecting open-source evidence in pursuit of trial-worthy investigations.<sup>158</sup>

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153 The coalition consists of Article 19, CPJ, RSF, International Media Support (IMS), Fundación para la Libertad de Prensa (Flip), Freedom House, Global Forum for Media Development (GFMD), Gulf Centre for Human Rights (GCHR), International Freedom of Expression Exchange (IFEX), IFJ, Internews, IPI, IWMMF, Palestinian Center for Development and Media Freedom (MADA), PEN America, FPU and World Association of News Publishers (WAN-IFRA).

154 See <https://ifex.org> accessed 5 November 2020.

155 Eg, visit of the 17 members of the ISCO SOJ Coalition to Mexico in November 2019 <https://internews.org/news/mexican-government-declines-recognize-freedom-expression-crisis> accessed 5 November 2020.

156 See <http://opiniojuris.org/2020/09/18/anchoring-accountability-for-mass-atrocities-providing-the-permanent-support-necessary-to-fulfil-international-investigative-mandates-part-ii> accessed 5 November 2020. For more background on the research project, see [www.elac.ox.ac.uk/moving-fact-finding-case-building](http://www.elac.ox.ac.uk/moving-fact-finding-case-building) accessed 5 November 2020.

157 Interview with Christophe Deloire, Isabelle Amosse (28 August 2020); Interview with Antoine Bernard (1 September 2020).

158 One of the earliest efforts to conduct collaborative open-source investigations began in 2010 at the open newsroom tool Storyful.

126. For example, since September 2019, RSF has been working on a Justice for Journalists Task Force with the aim of initiating and supporting investigations into crimes against journalists in accordance with international standards. According to Antoine Bernard, RSF's Senior Adviser for International Strategic Litigation, their strategy is much broader than providing legal support to victims and families as their plans include: conducting their own investigations; triggering and interacting with prosecutors, police and investigating judges in national as well as regional and international jurisdictions; legal representation of victims; and direct participation in proceedings when appropriate.<sup>159</sup>
127. A recent high-profile example of NGO evidence-gathering work in conflict settings has been the efforts by the Commission for International Justice and Accountability (CIJA) to investigate war crimes, crimes against humanity, and terrorism acts committed in Syria, and prepare evidence for criminal prosecutions. CIJA's innovation was to take prosecutors and investigators with experience in national and international tribunals and get them to collect evidence and prepare case briefs for future prosecutions. CIJA then enters into agreements with national prosecutors' or international judicial institutions to provide their evidence in court proceedings. While CIJA's work is not centred on attacks on journalists, its evidence-gathering efforts have been used in investigations of attacks on journalists and the organisation provided key evidence in the lawsuit brought in US courts against Syria for the extrajudicial killing of war correspondent Marie Colvin.<sup>160</sup>
128. NGOs have led the way in relying on open-source evidence and social media posts to conduct rigorous trial-worthy investigations.<sup>161</sup> According to the Pew Research Center, some five billion people worldwide own mobile phones, half of them equipped with cameras that can often be used to document crimes.<sup>162</sup> The increasing use of social media generates important evidence, including photographs, status updates, a person's location at a certain time and direct communications to or from a defendant's social media account.<sup>163</sup>
129. A trailblazer in the field of open-source investigation has been Bellingcat, an independent international collective of researchers, investigators and citizen

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159 Interview with Antoine Bernard, RSF Senior Adviser, International Strategic Litigation, (1 September 2020).

160 Ewan Brown, a war crimes investigator with CIJA, reconstructed the command and control system of the Syrian military and intelligence services. His testimony revealed the role played by senior regime figures in the crackdown against protesters and the journalists giving them voice in the early days of the conflict. Documents attached to his expert report also were used to prove that the regime was wiretapping journalists to track their movements and hacking opposition websites and Facebook accounts [www.justsecurity.org/54653/important-sources-evidence-unsealed-lawsuit-syria-killing-marie-colvin-case](http://www.justsecurity.org/54653/important-sources-evidence-unsealed-lawsuit-syria-killing-marie-colvin-case) accessed 5 November 2020. For the official expert report submitted in court, see [https://cja.org/wp-content/uploads/2018/04/17-Expert-Report-of-Ewan-Brown-dated-March-2-2018\\_Redacted.pdf](https://cja.org/wp-content/uploads/2018/04/17-Expert-Report-of-Ewan-Brown-dated-March-2-2018_Redacted.pdf) accessed 5 November 2020.

161 See n 156 above.

162 See [www.pewresearch.org/global/2019/02/05/smartphone-ownership-is-growing-rapidly-around-the-world-but-not-always-equally](http://www.pewresearch.org/global/2019/02/05/smartphone-ownership-is-growing-rapidly-around-the-world-but-not-always-equally) accessed 5 November 2020.

163 Social media evidence-gathering raises a number of legal and privacy issues that are constantly evolving due to the highly dynamic and heterogeneous nature of social media. For a review of some of these issues, see Humaira Arshad, Aman Jantan, Esther Omolara, *Evidence Collection and Forensics on Social Networks: Research Challenges and Directions*, *Digital Investigation*, vol 28, March 2019, pp 126–138.

journalists using open-source and social media investigation to probe a variety of subjects, including murder cases. Bellingcat gained notoriety for their ability to use open data to identify key suspects in the Malaysian Airlines Flight 17 investigation and in the Skripals poisoning. Bellingcat's successes have encouraged investment in open-source research capability by much larger and long-established media, and human rights institutions.<sup>164</sup> The *New York Times* Visual Investigations team produced an important video analysis of the movements of the Saudi hit team that killed the journalist Khashoggi.<sup>165</sup>

130. The relevance of open-source investigations for trials became clear when in 2017 the International Criminal Court (ICC) issued an indictment against the Libyan warlord Mahmoud al-Werfalli based primarily on open-source evidence consisting of a series of videos showing extrajudicial killings posted on social media.<sup>166</sup> The newly created International Independent and Impartial Mechanism (IIIM) on Syria, created by the UN General Assembly to gather evidence of potential war crimes and other violations in Syria, has also shown interest for the work of Bellingcat and CIJA, which indicates the potential for these new initiatives to feed into future judicial proceedings.
131. These evidence-gathering efforts open new possibilities in furthering accountability for attacks on journalists, but they also raise a number of possible questions and risks that need to be addressed.<sup>167</sup> In particular:
  - untrained collection of physical or forensic evidence could limit its value before a court if the chain of custody is not properly handled;
  - protection of witnesses need to be seriously considered if NGOs take statements for the purpose of possible prosecution;
  - re-traumatisation of victims and witnesses due to multiple interviews;
  - NGOs may need to make changes in their fact-gathering methodologies if their aim is to gather evidence that would be usable in a possible judicial proceeding; and

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164 New initiatives include: 'The eyeWitness to Atrocities' mobile app with the capability to authenticate and securely store footage of gross human rights abuses; *The New York Times* Visual Investigations team; Amnesty International's Digital Verification Corps; Human Rights Watch's OSINT unit; The Atlantic Council's DFR Lab; and Berkeley's Human Rights Investigations Lab. For more background, read [www.nybooks.com/daily/2019/06/10/bellingcat-and-how-open-source-reinvented-investigative-journalism](https://www.nybooks.com/daily/2019/06/10/bellingcat-and-how-open-source-reinvented-investigative-journalism) accessed 5 November 2020.

165 David Botti, Malachy Browne, Drew Jordan, Anjali Singhvi, David D Kirkpatrick, Carlotta Gall and Ben Hubbard, 'Killing Khashoggi: How a Brutal Saudi Hit Job Unfolded' *The New York Times* (New York, 16 November 2018) [www.nytimes.com/video/world/middleeast/10000006154117/khashoggi-istanbul-death-saudi-consulate.html](https://www.nytimes.com/video/world/middleeast/10000006154117/khashoggi-istanbul-death-saudi-consulate.html) accessed 5 November 2020.

166 'Situation in Libya: ICC Pre-Trial Chamber I issues a warrant of arrest for Mahmoud Mustafa Busayf Al-Werfalli for war crimes' 15 August 2017 [www.icc-cpi.int/Pages/item.aspx?name=pr1328](https://www.icc-cpi.int/Pages/item.aspx?name=pr1328); Human Rights Watch, 'Libya: Videos Capture Summary Executions', 16 August 2017 [www.hrw.org/news/2017/08/16/libya-videos-capture-summary-executions](https://www.hrw.org/news/2017/08/16/libya-videos-capture-summary-executions) accessed 5 November 2020.

167 See n 29 above.

- NGOs need to be aware that their actions could actually harm a possible future criminal investigation. For example, by gathering multiple statements from a witness, NGOs may create difficulties for that witness when testifying in a future legal proceeding.

132. To address these possible risks while also fulfilling the potential of NGO-led efforts to effectively support investigations into attacks on journalists will require more coordination between prosecuting authorities, UN mechanisms and NGOs, as well as new efforts to develop clearer standards and procedures for sharing and preserving evidence, protecting witnesses and avoiding re-traumatisation of victims. Section VII explores some of the avenues for better cooperation.

### Case study: investigating the murder of Daphne Caruana Galizia

133. On 16 October 2017, journalist Caruana Galizia was killed when her car was detonated by a remote control near her home in Malta. Caruana Galizia was the country's most prominent investigative journalist, whose work focused on corruption among Maltese politicians and public officials. In particular, Caruana Galizia had published a story on her blog in 2016 about a number of secret companies based in Panama that were tied to Maltese politicians. The story included allegations that the Maltese Prime Minister's wife had engaged in corruption. Both the Prime Minister and his wife denied the allegations.

134. The pursuit of justice since her death has come to symbolise the battle over press freedom and journalism, and the obstacles faced by those seeking accountability. Friends, family and a consortium of dozens of journalists and NGOs worldwide have collectively fought to keep pressure on the Maltese authorities. International and European institutions have launched initiatives to monitor Malta's investigation and ensure that the investigation reaches those who instigated the murder.<sup>168</sup>

135. The below chronology highlights some of the key dates and actions taken by the different actors in pursuit of accountability. While a testament to the importance of perseverance and the availability of different channels to pressure Malta, it also shows the incredible efforts needed today to pursue real accountability in a country that is part of the EU.

- 16 October 2017: Caruana Galizia was killed by a car bomb close to her home.

<sup>168</sup> For more background on the murder of Caruana Galizia, see RSF and The Shift News, 'Justice Delayed: The Assassination of Daphne Caruana Galizia and Malta's Deteriorating Press Freedom Climate', 15 October 2019 <https://rsf.org/en/news/rsf-report-assassination-daphne-caruana-galizia-and-maltas-deteriorating-press-freedom-climate> accessed 5 November 2020. See also efforts by Forbidden Stories, a network of journalists whose mission is to continue and publish the work of other journalists facing threats, prison or murder, who coordinated the work of 45 journalists from 18 news organisations after the assassination of Caruana Galizia <https://forbiddenstories.org/case/the-daphne-project> accessed 5 November 2020.

- Within days, forensic experts and investigators from Europol, the Netherlands and the US arrived in Malta to assist the local police.<sup>169</sup>
- 19 October 2017: four UN experts called for a ‘prompt, thorough and independent public inquiry’ immediately after Daphne’s assassination.<sup>170</sup>
- November 2017: members of the European Parliament visited Malta and criticised the country’s rule of law, and noted a ‘perception of impunity’ among government officials.
- 4 December 2017: Malta’s police arrested ten suspects in the Caruana Galizia case. Seven were quickly released and three were charged in July 2019 for the murder. Those arrested did not include instigators.
- 19 January 2018: the Partner Organisations to the Council of Europe Platform to Promote the Protection of Journalism and Safety of Journalists issued a statement in which they noted that ‘[m]ore than three months after the journalist’s brutal murder there are no public indications to suggest that the authorities have identified the people who commissioned, planned or orchestrated the murder’, and called on the Parliamentary Assembly of the Council of Europe (PACE) to appoint a special rapporteur to monitor the ongoing murder investigation and make an assessment of the contextual circumstances that led to the murder.
- 23 April 2018: PACE’s Committee on Legal Affairs and Human Rights appointed Pieter Omtzigt as a special rapporteur to monitor the investigation into the assassination of Caruana Galizia.<sup>171</sup>
- 8 June 2019: Omtzigt produced a report identifying a series of concerns relating to the murder investigation and PACE adopted Resolution 2293 on 26 June 2019 demanding that Malta set up an ‘independent public inquiry’ into the assassination within three months.<sup>172</sup>
- 20 September 2019: just six days before the PACE deadline, the Maltese Government launched a public inquiry.<sup>173</sup> Both the terms of reference, as well as the composition of the Board of Inquiry, proved to be problematic. Maltese press and civil society raised extensive concerns about the government’s

169 See [www.maltatoday.com.mt/news/national/81368/fbi\\_forensic\\_team\\_to\\_reach\\_malta\\_on\\_thursday#.X2h\\_m-hLg2w](http://www.maltatoday.com.mt/news/national/81368/fbi_forensic_team_to_reach_malta_on_thursday#.X2h_m-hLg2w); ‘Europol to Help Probe Malta Journalist’s Death’, 27 October 2017 [www.courthousenews.com/europol-help-probe-malta-journalists-death](http://www.courthousenews.com/europol-help-probe-malta-journalists-death) accessed 5 November 2020.

170 Agnes Callamard, Special Rapporteur on extrajudicial, summary or arbitrary executions; Michel Forst, Special Rapporteur on the situation of human rights defenders; Juan Pablo Bohoslavsky, Independent Expert on the effects of foreign debt and human rights; and David Kaye, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression.

171 See <https://assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=7034&lang=2&cat=5> accessed 5 November 2020.

172 See <https://pace.coe.int/en/files/27724/html> accessed 5 November 2020.

173 See <https://download.repubblica.it/pdf/2019/esteri/justice-delayed-report.pdf> accessed 5 November 2020.

announcement, primarily focused on perceived conflicts of interest of two members of the board.

- 30 September 2019: the matter returned to the PACE Committee on Legal Affairs and Human Rights, which adopted a declaration stating that ‘the inquiry as currently constituted clearly does not meet the Assembly’s expectations’.
- 14 November 2019: Maltese law enforcement arrested Melvin Theuma, a taxi driver whom police described as a suspected middleman.<sup>174</sup> Theuma offered to name those responsible for ordering the murder of Caruana Galizia in exchange for a presidential pardon, according to media reports.<sup>175</sup>
- 20 November 2019: Maltese law enforcement detained Yorgen Fenech, a businessman, as he was trying to leave Malta. On 30 November 2019, police charged Fenech with complicity to murder and other charges related to the case, including membership in a criminal gang and conspiracy to cause an explosion.
- 26 November 2019: Konrad Mizzi, the Tourism Minister, and Keith Schembri, the Chief of Staff in the Muscat administration, resigned, and Chris Cardona, the Economy Minister, announced that he was suspending himself while the investigation into the journalist’s death continued.
- December 2019: Maltese Prime Minister announced he would resign in January over the government’s handling of the probe into the murder of Caruana Galizia.
- 12 February 2020: the French Financial Prosecutor decided to open a preliminary investigation into the corruption of foreign officials in the case of Caruana Galizia. The decision followed the filing of a formal criminal complaint by RSF and the Caruana Galizia family on 3 December 2019 for bribery and complicity into Caruana Galizia’s murder.<sup>176</sup>

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174 See <https://cpj.org/data/people/daphne-caruana-galizia> accessed 5 November 2020.

175 See [www.theguardian.com/world/2019/nov/19/suspected-middleman-in-daphne-caruana-galizia-arrested-malta](http://www.theguardian.com/world/2019/nov/19/suspected-middleman-in-daphne-caruana-galizia-arrested-malta) accessed 5 November 2020.

176 See [www.lemonde.fr/police-justice/article/2020/02/12/le-pnf-ouvre-une-enquete-preliminaire-dans-l-affaire-de-la-journaliste-maltese-assassinee\\_6029341\\_1653578.html](http://www.lemonde.fr/police-justice/article/2020/02/12/le-pnf-ouvre-une-enquete-preliminaire-dans-l-affaire-de-la-journaliste-maltese-assassinee_6029341_1653578.html) accessed 5 November 2020.



## VI. Setting up a standing international Investigative Task Force

136. Sending international experts to conduct criminal investigations or assist local investigations has proven effective in overcoming local capacity issues and corruption, but such deployments remain an exception and when they do occur, they often require lengthy negotiations and logistical build-up, which reduces their effectiveness. Such deployments have occurred in the context of massive human rights violations, often in conflict-related situations, and increasingly during criminal investigations into certain political assassinations, cross-border trafficking and terrorist attacks. In the case of attacks on journalists, the deployment of international experts to investigate has so far been limited to bilateral support between states for investigations into the killing of well-known Western journalists in conflict zones<sup>177</sup> or other high-profile cases, such as the recent murder of Caruana Galizia in Malta or Khashoggi in Turkey.<sup>178</sup>
137. Setting up a standing international Investigative Task Force with the mandate to investigate attacks on journalists and other activists targeted for their role in exposing information (eg, human rights activists and bloggers) would ensure that attacks against journalists get investigated effectively and promptly.
138. There are strong arguments in favour of anchoring any permanent investigative body within the UN system. However, the major obstacle is political and this report urges signatories to the Global Pledge on Media Freedom to pursue a two-pronged strategy: support efforts to create a permanent UN investigative body, but in parallel to such efforts, create a multilateral Investigative Task Force outside the UN system that could proceed quickly in supporting investigations into attacks on journalists and human rights defenders.

### 1) *A permanent UN investigative body*

139. The UN has extensive experience with conducting investigations. Commissions of inquiry have been established by the Security Council, the General Assembly, the UNHRC, the Secretary-General and the High Commissioner for Human Rights.<sup>179</sup> While UN-led investigations usually focus on situations of conflicts and mass atrocity (eg, Iraq, Rwanda and Syria), there are precedents for the UN deploying

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177 Eg, the FBI investigated the murder of Pearl in Afghanistan, and France dispatched French investigators to the Central African Republic to investigate the murder of Lepage.

178 The US sent FBI experts and the Dutch dispatched forensic experts to support the Maltese investigation into the murder of Caruana Galizia [www.independent.com.mt/articles/2017-10-17/local-news/Home-Minister-says-FBI-Dutch-experts-to-help-in-Daphne-murder-investigation-6736180326](http://www.independent.com.mt/articles/2017-10-17/local-news/Home-Minister-says-FBI-Dutch-experts-to-help-in-Daphne-murder-investigation-6736180326) accessed 5 November 2020.

179 See, eg, UN, 'International Commissions of Inquiry, Fact-finding Missions: Home' <http://libraryresources.unog.ch/factfinding> (listing UN investigations from 1963 to the present); see also Commissions of Inquiry and Fact-Finding Missions on International Human Rights and Humanitarian Law, Guidance and Practice (2015) [www.ohchr.org/Documents/Publications/Col\\_Guidance\\_and\\_Practice.pdf](http://www.ohchr.org/Documents/Publications/Col_Guidance_and_Practice.pdf) accessed 5 November 2020.

investigators to assist in the fight against corruption,<sup>180</sup> as well as in investigations of assassinations against politicians such as Rafiq Hariri of Lebanon<sup>181</sup> and Benazir Bhutto of Pakistan.<sup>182</sup>

140. The CICIG was set-up by the UN at the request of Guatemala (following sustained advocacy by Guatemalan civil society) and successfully assisted Guatemalan law enforcement in combating corruption and organised crime. While the CICIG did not have prosecutorial powers, it was able to initiate and collaborate in investigations and participate as a co-plaintiff in the cases within its mandate. In 2017, CICIG and the Public Prosecutor's office filed a petition against Congressman Julio Juárez Ramírez accusing him of masterminding the 2015 assassination of journalist Danilo López who was investigating the congressman for tax irregularities. Several other suspects have been arrested in connection to the murder.<sup>183</sup>
141. While traditionally, UN commissions of inquiry have not had explicit mandates to gather and collate evidence with a view to use them in criminal proceedings, this has changed in recent years with the creation of the International Independent and Impartial Mechanism for Syria, the Independent Investigative Mechanism for Myanmar and the UN Investigative Team to Promote Accountability for Crimes Committed by Da'esh/ISIL (UNITAD). These mechanisms, created respectively through the UN General Assembly, the UNHRC and the UN Secretary-General (pursuant to a request by the Security Council), have mandates that extend beyond traditional human rights monitoring and reporting as they include the preparation of files that can be used in national, regional and international criminal trials. For many observers, the establishment of these mechanisms marks an 'accountability turn in UN fact-finding'.<sup>184</sup>
142. The creation of these mechanisms led to calls for the creation of a permanent investigative body:
  - In an op-ed on 26 September 2018, Lord William Hague and Angelina Jolie, as co-founders of the Preventing Sexual Violence in Conflict Initiative, a global

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180 The International Commission against Impunity in Guatemala (Comisión Internacional contra la Impunidad en Guatemala or CICIG) was set-up by the UN at the request of Guatemala (following sustained advocacy by Guatemalan civil society) and successfully assisted Guatemalan law enforcement in combating corruption and organised crime [www.un.org/undpa/es/node/183334](https://www.un.org/undpa/es/node/183334) accessed 5 November 2020.

181 The UN International Independent Investigation Commission was established in April 2005 by Security Council Resolution 1595 to investigate the assassination of Rafic Hariri, the former Prime Minister of Lebanon on 14 February 2005.

182 Secretary-General Ban Ki-moon appointed a UN Commission of Inquiry, at the request of the Pakistani Government, to investigate the attack that killed Pakistan's Prime Minister Benazir Bhutto on 27 December 2007. The powers of the commission were more limited than those given the Hariri investigation <https://news.un.org/en/story/2010/04/335482-un-report-bhutto-murder-finds-pakistani-officials-failed-profoundly> accessed 5 November 2020.

183 See <https://cpj.org/2017/04/murder-and-justice-the-cpj-impunity-newsletter-mar> accessed 5 November 2020.

184 The term is used by D'Alessandra, see n 21 above. See also Anchoring Accountability for Mass Atrocities: Providing the Support Necessary to Fulfil International Investigative Mandates <http://opiniojuris.org/2020/09/18/anchoring-accountability-for-mass-atrocities-providing-the-support-necessary-to-fulfil-international-investigative-mandates> accessed 5 November 2020.

campaign to end the use of rape as a weapon of war, stated: 'We believe that UN Member States should now go further, to create a permanent, independent investigatory body with a mandate to be deployed to gather and assess evidence in cases involving alleged war crimes, crimes against humanity, and other grave violations of human rights'.<sup>185</sup>

- The ICJ has also started convening discussions around the advantages of creating a UN SIIM that could investigate crimes under international law as opposed to creating ad hoc investigatory mechanisms to deal with particular conflicts or situations.<sup>186</sup>

143. While initial discussions have tended to focus on the role of such an institution in investigating crimes listed in the Rome Statute (genocide, war crimes, crimes against humanity and aggression), advocates of such an institution have indicated that the mandate could include 'other serious human rights violations that amount to crimes under international law including extra-judicial killings, torture and enforced disappearance where, for example, they meet a certain threshold'.<sup>187</sup>
144. With respect to attacks on journalists, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Callamard, has called on the UN General Assembly or UNHRC to establish a 'Standing Instrument' to investigate allegations of targeted killing and other acts of violence against journalists, human rights defenders or others targeted because of their peaceful activities or expressions. The mandate of the new instrument would be to investigate such attacks and prepare files to facilitate and expedite fair and independent criminal proceedings in courts or tribunals that have or may in the future have jurisdiction over the crimes being investigated.<sup>188</sup>
145. A UN-created 'standing instrument' would be an essential tool in the fight against impunity and would fill a vacuum in terms of available international mechanisms to investigate grave violations of human rights, including grave crimes against journalists and human rights activists.
146. A permanent UN investigative body would present a number of advantages over ad hoc structures, including:

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185 'The UN needs a new body to investigate war crimes so that no one can escape justice', *The Daily Telegraph* [www.telegraph.co.uk/news/2018/09/26/angelina-jolie-william-hague-un-needs-new-body-investigate-war](https://www.telegraph.co.uk/news/2018/09/26/angelina-jolie-william-hague-un-needs-new-body-investigate-war) accessed 5 November 2020. They note that '[s]uch a body should have a clear mandate, strong investigative powers, dedicated staff and sustainable funding. It could either grow out of the existing Mechanism for Syria, which could be enlarged and made permanent, or it could be established as a new and separate body modelled, for instance, on the Organisation for the Prohibition of Chemical Weapons.'

186 See n 23 above.

187 See <https://opiniojuris.org/2019/04/11/is-it-time-to-create-a-standing-independent-investigative-mechanism-siim-part-ii> accessed 5 November 2020.

188 See n 24 above.

- Deterrence: a standing body would strengthen the deterrent effect to potential perpetrators, as they will know that evidence of their crimes may be subject to collection and preservation by an international investigative body.
- Preservation of evidence: the standing body would ensure that critical evidence that might otherwise be lost or compromised is preserved by a UN body until a jurisdiction that might use the evidence becomes seized of the matter.
- More efficient deployments: the presence of a permanent body would shorten the startup delays related to recruiting staff and logistical set up that face most newly created ad hoc commissions. A standing Task Force would also allow for the consolidation of specific expertise, experience, systems, personnel, policies and practices that require time to develop.
- Stronger protection of witnesses and victims: a permanent body would better protect witnesses and victims as it would be able to develop systems and procedures to protect witnesses and victims in a more durable and sustainable manner.
- Political autonomy: having a standing body would obviate the need for spending political and diplomatic resources for each new ad hoc mechanism, and would minimise the possibility that certain States could block or impede its creation on unprincipled grounds.

147. The main obstacle to the creation by the UN of a standing investigatory body is the current absence of political will. With multilateral institutions under attack from multiple international powers<sup>189</sup> – and the US going as far as imposing sanctions on the ICC’s Prosecutor – there seems to be little appetite in the UN for the creation of a new permanent investigative body – particularly one that would have political autonomy. When asked about Callamard’s proposal for the creation of ‘a Standing Instrument’ for conducting investigations, the Secretary-General’s response was to deflect the question by noting that: ‘This recommendation from the Special Rapporteur was made to the UNHRC and the General Assembly (not to the Secretary-General)’. So far, even states who are the usual defenders of free media at the UN, notably the 22-member coalition known as the Group of Friends for the Protection of Journalists, have not shown the appetite to carry forward the proposal for a standing Investigative Task Force to the General Assembly. Their draft resolution to the General Assembly on the safety of journalists submitted in late 2019 and adopted on 18 December 2019 did not mention the creation

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189 See, eg, statement by the Elders, ‘Attacks on Multilateral System Threaten Global Peace and Security’, 3 December 2019 [www.theelders.org/news/attacks-multilateral-system-threaten-global-peace-and-security#:~:text=The%20multilateral%20system%20is%20under,the%20regulation%20of%20international%20trade](https://www.theelders.org/news/attacks-multilateral-system-threaten-global-peace-and-security#:~:text=The%20multilateral%20system%20is%20under,the%20regulation%20of%20international%20trade); Louis Charbonneau, UN Director at Human Rights Watch, ‘Multilateralism Under Threat’, 24 June 2019 [www.hrw.org/news/2019/06/24/multilateralism-under-threat](https://www.hrw.org/news/2019/06/24/multilateralism-under-threat) accessed 5 November 2020.

of any new international investigative body and limited itself to call on states to strengthen national efforts to investigate attacks against journalists.<sup>190</sup>

148. However, the absence of current political will at the UN should not be an excuse for procrastination. There is a need to advance the proposal within the UN system and this section will attempt to highlight some key issues that deserve to be discussed, notably: (1) what would the mandate of such a mechanism cover; (2) how would cases be referred to it; and (3) with whom would the mechanism share information.

**A) CONSIDERATIONS AROUND SCOPE OF MANDATE**

149. A first issue to consider is whether the mandate of such a standing body should be limited to grave violations against journalists and human rights defenders or be widened to include war crimes, crimes against humanity and other grave violations of human rights, regardless of the identity of the victim. From a principled perspective, it would be better to favour a wider mandate, although the broader the mandate, the harder it is to get political backing for creating such a new body and the higher the risk of overstretch.
150. Regardless of the scope of the mandate, a threshold would need to be included to ensure that the Task Force is strategic in its investigations. One possibility might be to introduce a requirement that the trigger for investigations is that violations are perpetrated on a widespread basis or that the violation – even if isolated – has wide ranging repercussions for human rights, notably for freedom of expression.
151. The permanent investigative body would coexist with other UN mechanisms and complement them where needed just as the IIM on Syria coexists and collaborates with the UN-mandated Commission of Inquiry on Syria and other UN Special Procedures.

**B) QUESTIONS AROUND THE MODE OF REFERRAL OF CASES**

152. Any country where an attack on journalists occurs could refer the case to the standing investigative mechanism to investigate. The politically divisive issue is what could trigger an investigation absent state consent. The recent precedents of the UN investigative bodies on Myanmar and Syria strongly suggest that inter-governmental bodies such as the UNHRC and UN General Assembly should have the power to refer situations to the investigative Task Force on their own initiative or on the recommendation of other UN mechanisms, such as Special Rapporteurs. The Security Council would of course also have the ability to refer a matter directly to the investigative Task Force just as it already has the authority to refer a situation to the ICC. Regional organisations should also have the possibility of referring cases to such a body.

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<sup>190</sup> Resolution adopted by the General Assembly on 18 December 2019, The Safety of Journalists and the Issue of Impunity, A/RES/74/157.

153. Another point to consider is whether the investigative mechanism should have the power to initiate investigations on its own if certain criteria are met. By way of comparison, the Prosecutor of the ICC has power to initiate investigations under the Rome Statute if, on the basis of information received, there are reasonable grounds to believe that crimes within the jurisdiction of the court have been committed (Article 15 of the Rome Statute). Similarly, it should be possible for the investigative mechanism to initiate investigations if certain criteria are met.

**C) WITH WHOM WOULD THE INVESTIGATIVE BODY SHARE ITS INVESTIGATIONS**

154. The IIIM on Syria addressed some of the key principles of international law that need to be considered when thinking about the institutions that a UN investigative body could share its investigation files with. In short, UN-mandated investigations:
- will share information with national, regional or international courts or tribunals that have or may in the future have jurisdiction over these crimes, in accordance with international law, in order to facilitate and expedite fair and independent criminal proceedings, in accordance with international law standards;
  - may share information either at the request of national, regional or international courts or tribunals, or on its own initiative. It is anticipated that the mechanism will generally not share information in circumstances in which a trial may be held in absentia on the basis of universal jurisdiction; and
  - will share its information only with those jurisdictions that respect international human rights law and standards, including the right to a fair trial, and where the application of the death penalty would not apply for the offences under consideration.

**D) A MULTILATERAL INVESTIGATIVE TASK FORCE SET UP BY A 'COALITION OF THE COMMITTED'**

155. Given that the creation of a permanent UN investigative body will take time, and that political will for such a body seems to be currently lacking, it becomes important to explore alternatives to provide investigative support to end impunity for attacks against journalists. This report recommends the creation of a multilateral international Investigative Task Force by signatories of the Global Pledge on Media Freedom as well as other countries supportive of media freedom – a group that could be considered as a 'coalition of the committed'. Such a multilateral Investigative Task Force would be composed of international experts readily available to support investigations – local, regional or international – into attacks on journalists, as well as attacks on human rights defenders or others targeted because of their peaceful activities or expressions.
156. While it would not have the standing that a UN mandate would provide, a multilateral investigative Task Force set up by a group of like-minded and committed of countries would present a number of key strengths:

- Less susceptible to current UN blockages: since the effort would gather like-minded committed states, it can be set up faster and with fewer compromises.
- More legitimacy and resources than what can be provided bilaterally: while certain countries offer support in investigations (notably the US FBI that can assist by deploying experts), a coalition of countries from different parts of the world, notably one that would include a number of regional champions of freedom of expression, would have more legitimacy and would be able to draw on different resources (not just technical, but also investigative expertise with local knowledge, language capacity and familiarity with local environments).
- Complement existing mechanisms: the Investigative Task Force would complement existing UN and regional institutions as it could act as a resource for them. In addition, a successful multilateral effort could act as a powerful precedent and strengthen momentum for the creation of a permanent UN investigative body or other UN investigative tools by showing the effectiveness of such a mechanism.

157. The Task Force's role would be able to assist in individual investigations or work alongside national authorities for longer periods to assist them in addressing systemic issues, such as the need to adopt new complaints procedures, or introducing a witness protection programme. The Task Force would not only act as a resource for national authorities but will also provide support to any regional or international body with a mandate to investigate attacks on journalists, including UN Special Rapporteurs and UN Commissions of Inquiry.
158. To ensure a prompt and efficient process in setting up and running the Task Force, the report recommends hosting in an existing organisation with global reach, independence and the right convening power. A natural candidate would be the IBA, which is already acting as the Secretariat for the High Level Panel of Legal Experts on Media Freedom and is a pioneer in promoting human rights and the rule of law.
159. To succeed, the Task Force will need to be properly funded and well-resourced and States in the Media Freedom Coalition should commit to funding it as part of their overall commitment to media freedom. Countries that are unable to provide funding should at the very least designate individuals who would be eligible to serve on such a Task Force if called upon to do so, in other words, placing individual investigators, forensic experts, specialist interviewers and lawyers on a roster of experts who could be called upon at no cost to investigate attacks against journalists. Committed states should also support the deployment of the Task Force, where appropriate, using political advocacy in both bilateral and multilateral contexts.
160. The Task Force would be able to intervene in investigations based on a request by a national, regional or international entity with a mandate to investigate or monitor human rights violations. It could also respond to requests by civil society

organisations working on documenting attacks on journalists. To ensure that the Task Force uses its resources strategically, requests from civil society could be filtered through the Advisory Network of the Media Freedom Coalition, which includes leading NGOs working on media freedom.<sup>191</sup>

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191 See n 28 above.



## VII. Strengthening evidence-gathering efforts by NGOs

161. As highlighted in Section V, NGOs are increasingly playing a key role as evidence gatherers in attacks against journalists and helping victims bring cases to courts. This has shown an important potential for strengthening investigations, but there are also pitfalls related to protection of evidence and sources.
162. Interviews conducted by Ambassador Stephen Rapp with NGOs that provide information for investigations into mass atrocities, as well as UN investigative mechanisms and prosecuting authorities, highlighted a number of areas that could benefit from stronger cooperation.<sup>192</sup> In particular, NGOs highlighted the following priority areas to strengthen their ability to transfer evidence to UN investigations or prosecuting authorities:
- better mechanisms to protect the security of witnesses and the security of transmitting material;
  - more capacity building for NGOs through better training, constructive feedback on how to transfer evidence, logistical support and funding – in particular, NGOs expressed a wish for more training in best practices to ensure that the probative value of the evidence collected is maximised (witness identification, consent to be interviewed and metadata storage);
  - wish for stronger cooperation between local NGOs and international mechanisms so that international mechanisms (with their more expansive technological resources) can verify digital material and corroborate witness and physical evidence; and
  - legal capacity building for NGOs, which would have spill-over benefits on building the rule of law as NGOs become better at treating and processing evidence and more able to press for justice in local judicial systems.
163. The Public International Law & Policy Group (PILPG) prepared a handbook to provide guidelines and best practices for the collection and management of information on serious human rights situations for civil society actors that are not professionally trained in such documentation practices.<sup>193</sup> The handbook outlines key ethical principles and documentation guidelines that would enable ‘unofficial investigators to do no harm, identify security risks, preserve crime scenes, prevent the loss of

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192 The interviews were conducted in the context of the ‘Anchoring Accountability for Mass Atrocities’ project by the University of Oxford, in partnership with the IBA and the US Holocaust Memorial Museum Simon Skjodt Center for Genocide Prevention.

193 PILPG, Handbook on Civil Society Documentation of Serious Human Rights Violations: Principles & Best Practices (2016) [https://static1.squarespace.com/static/5900b58e1b631bffa367167e/t/59dfab4480bd5ef9add73271/1507830600233/Handbook-on-Civil-Society-Documentation-of-Serious-Human-Rights-Violations\\_c.pdf](https://static1.squarespace.com/static/5900b58e1b631bffa367167e/t/59dfab4480bd5ef9add73271/1507830600233/Handbook-on-Civil-Society-Documentation-of-Serious-Human-Rights-Violations_c.pdf) accessed 5 November 2020.

evidence, and manage the information in manner that preserves confidentiality, security and probative value, with an eye to possible use in later redress processes and without jeopardizing the future work of professionally trained and officially appointed investigators’.

164. The Human Rights Center at UC Berkeley School of Law is spearheading a collaborative effort to develop an International Protocol on Open Source Investigations, which will set common standards and guidelines for the identification, collection, preservation, verification and analysis of online open-source information with an aim towards improving its effective use in international criminal and human rights investigations.<sup>194</sup> The aim of the effort is to establish legal and ethical norms for online open-source investigations, which will increase the likelihood that such information will be useful for justice and accountability purposes.
165. NGOs engaged in evidence-gathering efforts related to attacks on journalists should adopt best practices – be they ethical principles or investigation guidelines – in their efforts to investigate attacks on journalists. Signatories to the Global Pledge on Media Freedom could fund efforts to disseminate best practices for collecting and sharing evidence between NGOs and UN/judicial institutions and support capacity building initiatives for local groups working on investigating attacks on journalists. These efforts should be based on consultation with key NGO stakeholders and priority should be given to strengthening efforts to investigate attacks on journalists in countries with rampant impunity.

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<sup>194</sup> See <https://humanrights.berkeley.edu/programs-projects/tech-human-rights-program/international-open-source-investigations-protocol> accessed 5 November 2020.

## VIII. Strengthening the UN's response

166. In recent years, the UN has strengthened its coordination mechanisms to tackle violence against journalists.<sup>195</sup> In August 2017, UNESCO and OHCHR organised a consultation on strengthening the implementation of the UN Plan of Action, which has led to the Secretary-General appointing a designated senior official in his office on the safety of journalists, and re-establishing a network of focal points across the UN system for enhancing coordination.<sup>196</sup>
167. However, the UN has made little progress in addressing the lack of political will among its Member States to pursue accountability. Most attacks occur on journalists because they bother those in powerful places. In approximately one out of four murders of journalists, the prime suspects have been government or military officials who often interfere to block or derail any investigation.<sup>197</sup> There is still little to no international cost for governments or officials that attack journalists or purposely block or undermine investigations in such attacks.
- 1) *Creating a Special Representative for the safety of journalists and human rights defenders***
168. A civil society campaign put forward a proposal – led by RSF and since endorsed by more than 130 media outlets – for the UN to create the position of an SRSJ.<sup>198</sup> Appointed and mandated by the Secretary-General, the SRSJ would act as a central and permanent role in charge of elevating political attention to the issue and strengthening existing mechanisms.
169. The proposed role would have a much wider mandate and visibility than the current senior adviser role in the Secretary-General's team in charge of following up on safety of journalists. As envisaged by those pushing for the new role, the SRSJ mandate would be modelled on the successful precedent of the Special Representative for Children and Armed Conflict, which played a key role in developing concrete measures to improve protection of children in armed conflict through a variety of tools including assisting in adoption of a series of UN Security Council resolutions specific to children's protection and the creation of a protocol to the Convention on the Rights of the Child (adopted by the UN General Assembly in 2000, ratified today by 156 states), as well as the adoption and effective application of national legislation.
170. This report endorses the proposal for the creation of a new Special Representative, but would widen its mandate to also include human rights defenders and others targeted because of their peaceful activities to inform the public.

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195 See s V for a detailed review of the various initiatives.

196 See n 111 above

197 See n 15 above.

198 See n 30 above.

171. In November 2019, a spokesperson for the Secretary-General publicly responded to the idea of naming an SRSJ by saying it was ‘an interesting proposal’, but that ‘at present, there are no plans to announce such a position’.<sup>199</sup> While the Secretary-General did not specify any reasons for his answer, many commentators and advocates working on the issue believe that the Secretary-General is unlikely to act without a stronger push for reform from Member States.<sup>200</sup>
172. Key responsibilities of a newly created Special Representative role would include:
- through the Secretary-General, serving as a warning mechanism to the Security Council, allowing for the rapid implementation of the UN Security Council’s tools for action, including a fact-finding mission or an international commission of inquiry;
  - monitoring compliance by Member States with their obligations under the relevant UN Security Council and General Assembly resolutions, and helping and advising the UN Secretary-General on the drafting of his reports to the General Assembly and Security Council on the safety of journalists and the issue of impunity – these reports should carry a real political cost for persistent violators (see proposal below for ‘List of worst violators’); and
  - empowering the different Special Rapporteurs with a mandate touching on the protection of journalists, human rights defenders or others targeted because of their peaceful activities or expression, by relaying their recommendations and requests for State visits.
173. Ultimately, the success of the role of the Special Representative will depend on the willingness of the UN Secretary-General to engage his political capital in promoting the safety of journalists and human rights activists.

**2) *Developing a list of countries committing the gravest violations against journalists***

174. While impunity for attacks on journalists is a global problem, there is a group of countries that are responsible for the worst violations against journalists. The 13 countries on CPJ’s 2019 Global Impunity Index where journalists are slain and their killers go free account for more than three-quarters of the global total of unsolved murders of journalists for the index period.<sup>201</sup> All 13 have featured multiple times since CPJ first compiled the index in 2008. The repeat offenders represent a mix of

<sup>199</sup> The answer was obtained in response to a query by the media outlet Eye on Global Transparency. Toby McIntosh, ‘UN Secretary General Dismisses Proposals on Safety of Journalists’, 2 November 2019 <https://eyeonglobaltransparency.net/2019/11/02/un-secretary-general-dismisses-proposals-on-safety-of-journalists> accessed 5 November 2020.

<sup>200</sup> See, eg, comments by Jeremy Dear, Deputy General Secretary of the IFJ saying that ‘[t]here is clearly some strong political obstruction within the UN system’ <https://eyeonglobaltransparency.net/2019/11/01/un-not-welcoming-proposals-on-safety-for-journalists-soft-resolution-drafted> accessed 5 November 2020.

<sup>201</sup> See n 3 above.

conflict-ridden regions and more stable countries where criminal groups, politicians, government officials and other powerful actors resort to violence to silence critical and investigative reporting.

175. The UN should increase its efforts to tackle the worst violators of journalists' rights by holding them politically accountable at the Security Council and General Assembly. The approach of highlighting the worst violators has been successfully adopted in tackling violations against children in armed conflict where the UN Secretary-General is required every year to submit to the Security Council a list of countries and armed groups that commit the gravest violations against children in armed conflict.<sup>202</sup> The list has been described as a 'powerful tool' by advocacy groups as it combines the deterrent effect of 'naming and shaming' with built-in processes to address the problem.<sup>203</sup> Once a country is included in the list, the UN endeavours to work with it with a view to adopting and implementing action plans so that the country can end its violations and get off the list.
176. Currently, the UN Secretary-General reports periodically to the Security Council and the General Assembly about attacks on journalists, but unlike the reporting in place with respect to violations against children in armed conflict, the reports do not specifically list the worst offenders nor is the reporting tied to specific action plans that states have to adopt. This limits the impact of the reporting on state behaviour.
177. Existing UN Security Council resolutions, notably Resolutions 1738 (2006) and 2222 (2015), require the UN Secretary-General to include in his reports on protection of civilians in armed conflict some information about attacks on journalists. For example, UN Security Council Resolution 2222 (2015):

'[r]equests the Secretary General to include consistently as a sub item in his reports on the protection of civilians in armed conflict the issue of the safety and security of journalists, media professionals and associated personnel, including the existence of measures to protect such individuals facing an imminent threat, and to ensure that information on attacks and violence against journalists, media professionals and associated personnel and preventative actions taken to prevent such incidents is included as a specific aspect in relevant country specific reports'.<sup>204</sup>
178. Similar reporting requirements exist in a number of General Assembly resolutions. Resolution 74/157 calls on the Secretary-General to report on progress in protecting the safety of journalists and invites '[s]tates to share information on a voluntary basis on the status of investigations into attacks and violence against journalists'.<sup>205</sup>

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202 See n 32 above.

203 See n 33 above.

204 Para 19.

205 Para 18.

179. The panel recommends that the UN Secretary-General expand on his reporting duties on attacks on journalists to the Security Council and General Assembly by including more detailed information on attacks on journalists, as well as on the status of investigations into such attacks. Support for more expansive reporting finds echo in paragraph 20 of UN General Assembly Resolution 74/157 adopted in December 2019 which '[e]ncourages the Secretary-General to further intensify his efforts regarding the safety of journalists'.
180. The Secretary-General would be able to compile information on attacks on journalists from: (1) multiple institutions at the UN, notably UNESCO and human rights mechanisms, and the information provided as part of Indicator 16.10.1 of the SDGs; (2) regional mechanisms that track attacks on journalists; and (3) NGO efforts – including the very helpful indexes created by CPJ and RSF. Such information should allow the Secretary-General to develop a list of the worst violators of journalists' rights, as well as those that are failing to tackle impunity.
181. Inclusion on the list would lead to a range of graduated measures that could include targeted sanctions against key officials responsible for attacks on journalists or obstruction of investigations.<sup>206</sup> The measures could be taken through a UN framework (eg, a resolution at the General Assembly, Security Council or UNHRC) or through a coalition of countries committed to ending impunity for attacks on journalists. Removal from such a list would require listed countries to show that they conducted effective investigations into attacks on journalists, leading to prosecutions where appropriate.

### **Case study: how the use of list of 'worst violators' helped protect children in armed conflicts**

182. Such an approach has been adopted in tackling violations against children in armed conflict. Every year, as part of his report on children in armed conflicts, the UN Secretary-General is required to submit to the Security Council a list of the parties to conflict that commit the gravest violations against children in armed conflict.<sup>207</sup>

How does the listing of countries work for children in armed conflict?

- In November 2001, the Security Council requested that the Secretary-General compile a public list of parties to armed conflict that were using children as soldiers (Security Council Resolution 1379, S/RES/1379, adopted 20 November 2001).
- The first list was issued in 2002 and identified 23 parties in five countries.

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206 See n 16 above.

207 See n 32 above

- In 2004, the Security Council called on the parties listed to collaborate with the UN to create action plans within three months to end their use of child soldiers and threatened to impose targeted sanctions, such as arms embargoes, against those that refused or did not implement such plans (Security Council Resolution 1539, S/RES/1539, adopted 22 April 2004).
- In 2007, the Secretary-General made clear that the only way that governments or armed groups would be removed from his list was to sign and implement such action plans.
- In July 2015, the Security Council adopted Resolution 1612 instructing the Secretary-General to set-up a monitoring and reporting mechanism in the countries where parties to armed conflict were included on the Secretary-General's list. It also established a Security Council Working Group On Children And Armed Conflict to consider the information produced by the mechanism and recommend action in cases of ongoing violations
- As part of the monitoring and reporting mechanism, UN country teams and civil society groups on the ground collect reports of violations, and after verification by the UN, funnel the information to the Special Representative of the Secretary-General on Children and Armed Conflict for inclusion in the Secretary-General's reports to the Security Council. The Security Council working group then considers the reports and negotiates conclusions for each situation, including recommendations for the parties concerned, the SG and other actors.
- NGOs worked closely with the working group to develop a tool kit of 26 actions the working group could take, ranging from public statements, to field trips to countries where violations were taking place and recommendations for sanctions.
- The Special Representative of the Secretary-General plays a critical role in following up the working group's recommendations, making frequent field trips to conflict countries, meeting with both governments and non-state armed groups, and urging them to enter into action plans – formal signed agreements – with the UN to end their violations.
- The list has been effective by many standards. For many perpetrators, the naming-and-shaming tactic worked as they did not want the public stigma of being included on the list. By early 2017, 26 parties to armed conflict had signed action plans with the UN (11 governments and 15 non-state armed groups). Nine of the 26 had successfully implemented their plans and were 'delisted' by the Secretary-General.

- The list is not perfect. Any process at the Security Council is bound to be politicised. Eleven governments and armed groups have been on the list every year since its inception in 2002. And although the Security Council repeatedly expressed its intention to impose sanctions on armed groups that continue to use child soldiers, it generally failed to do so.<sup>208</sup>

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208 For more detail, read Jo Becker, *Campaigning for Children: Strategies for Advancing Children's Rights*, 2017.



## IX. Recommendations

183. This report focuses on international efforts and initiatives to promote more effective investigations into attacks on journalists in order to tackle persistent impunity. Its recommendations are primarily addressed to those states committed to protect media freedom, and in particular those states that formed the Media Freedom Coalition and pledged to ‘work together to protect media freedom’, including through ‘supporting and enhancing efforts by multilateral institutions, journalists’ associations, and civil society’.<sup>209</sup>

184. This report makes recommendations in three baskets:

### 1) States should set up an international Investigative Task Force

185. States should support the creation of a standing UN mechanism with the mandate of investigating violent crimes against journalists and human rights defenders targeted for their work. This includes supporting efforts to introduce a resolution to that effect at the General Assembly or UNHRC.

186. In the absence of political backing for the creation of a permanent UN investigation team, signatories to the Global Pledge on Media Freedom should create a multilateral Investigative Task Force composed of international experts readily available to support investigations – local, regional or international – into attacks on journalists as well as attacks on human rights defenders or others targeted because of their peaceful activities to inform the public.

187. To ensure the success of the Investigative Task Force, signatories to the Global Pledge on Media Freedom should:

- commit sufficient financial resources to the Task Force to allow it to operate effectively and sustainably;
- in case a particular signatory is unable to commit funds, it should at the very least make available qualified nationals to assist the Task Force at no cost – areas of expertise could include criminal investigators, forensic and digital experts, specialist interviewers, lawyers or prosecutors; and
- commit to use political advocacy in both bilateral and multilateral contexts to facilitate the work of the Investigative Task Force, notably the access of its investigators to potential crime scenes.

188. The Task Force should be hosted by an organisation with global reach, independence and the right convening power. A natural candidate would be the IBA, which is already acting as the Secretariat for the High Level Panel of Legal Experts on Media Freedom and is a pioneer in promoting human rights and the rule of law.

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<sup>209</sup> See [www.gov.uk/government/publications/global-pledge-on-media-freedom/global-pledge-on-media-freedom](https://www.gov.uk/government/publications/global-pledge-on-media-freedom/global-pledge-on-media-freedom) accessed 5 November 2020.

## **2) States should strengthen evidence-gathering efforts by NGOs**

189. States should provide funding for innovative NGO efforts to gather evidence in cases of attacks on journalists and help strengthen coordination between NGOs, UN accountability mechanisms and judicial institutions.

## **3) States should strengthen the UN's response to investigations**

190. States should support the establishment of a new UN Special Representative for Journalists and Human Rights Defenders Safety so that the UN General Assembly and Security Council can be more effectively engaged in advancing accountability for crimes against journalists. Appointed by the Secretary-General, the Special Representative's mandate would include following up on the progress of investigations into attacks on journalists and human rights defenders.
191. States should call on the UN Secretary-General to set-up a list of countries and armed groups that are the worst perpetrators of attacks on journalists that the Secretary-General would be tasked with presenting to the Security Council and the General Assembly. Inclusion on the list would lead to a range of graduated measures including, potentially, targeted financial sanctions against perpetrators of attacks on journalists. The measures could be taken through a UN framework (eg, a resolution at the General Assembly or Security Council) or through the Media Freedom Coalition, a group of countries that has committed to ending impunity for attacks on journalists. Removal from such a list would require listed countries to show that they conducted effective investigations into attacks on journalists and brought those responsible to justice.

## Report on the Use of Targeted Sanctions to Protect Journalists

13 FEBRUARY 2020

Authored by Amal Clooney, barrister and Deputy Chair the High Level Panel of Legal Experts on Media Freedom, the report has been endorsed by the High Level Panel, the [International Bar Association's Human Rights Institute](#), the Committee to Protect Journalists, Human Rights First, PEN America, Reporters without Borders, and the UN Special Rapporteur on Freedom of Expression, David Kaye. The report examines current challenges faced by journalists around the world and recommends the consistent use of targeted sanctions as a tool to enforce compliance with international human rights law, including the right to a free press. The report contains an in-depth analysis of the existing systems for targeted sanctions in the United States, the United Kingdom, Canada, and the European Union and concludes with eleven recommendations for designing and implementing global human rights sanctions regimes to better protect journalists around the world.

A copy of the report is available at: [www.ibanet.org/Media-Freedom-Sanctions-report-launch-2020.aspx](http://www.ibanet.org/Media-Freedom-Sanctions-report-launch-2020.aspx)

## A Pressing Concern: Protecting and Promoting Press Freedom by Strengthening Consular Support to Journalists at Risk

16 NOVEMBER 2020

Authored by the Honourable Professor Irwin Cotler, Chair of the Raoul Wallenberg Centre for Human Rights, former Minister of Justice and Attorney-General of Canada and member of the High Level Panel of Legal Experts on Media Freedom, the report has been endorsed by the High Level Panel and the [International Bar Association's Human Rights Institute](#), Committee to Protect Journalists, Felice Gaer, Former Vice Chair United Nations Committee against Torture and Director of the Jacob Blaustein Institute for the Advancement of Human Rights, Freedom House, Human Rights Foundation, James Foley Legacy Foundation, Journalists for Human Rights, Lantos Foundation for Human Rights, PEN America, REDRESS, Reporters Without Borders, and United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Irene Khan.

This report examines the existing State approaches respecting consular assistance for journalists at risk abroad, and proposes a new paradigm of justice and accountability organised around four recommendations:

- First, that consular protection by the Home State (where the journalist normally resides) is not a matter of discretion, but of legal obligation;
- Second, that the Host State (where the journalist is reporting) has responsibilities both to the Home State and to the journalist at risk;
- Third, that the rights of the journalist at risk are often marginalised or ignored, at the expense of consular protection;
- Finally, that the international community is not a bystander community, but a protective one.

A copy of the report is available at: [www.ibanet.org/Consular-Support-report-launch-2020.aspx](http://www.ibanet.org/Consular-Support-report-launch-2020.aspx)

## Report on Providing Safe Refuge to Journalists at Risk

23 NOVEMBER 2020

Authored by Professor Can Yeğinsu, barrister and member of the High Level Panel of Legal Experts on Media Freedom, the report has been endorsed by the High Level Panel, the [International Bar Association's Human Rights Institute](#), ARTICLE 19, Reporters without Borders and a host of other international organisations. By reference to real life case studies, the report examines in detail the circumstances which make relocation necessary for journalists at risk today, finding that the pathways to safety open to them are too few in number and those that do exist are too slow, burdensome, and difficult to navigate to be capable of providing practical and effective recourse.

The report recommends to members of the Media Freedom Coalition and partner States committed to the protection and promotion of media freedom: (i) the introduction of a new emergency visa for journalists at risk; and (ii) the implementation of a number of essential adjustments to the existing framework for safe relocation.

A copy of the report is available at: [www.ibanet.org/Safe-Refuge-report-launch-2020.aspx](http://www.ibanet.org/Safe-Refuge-report-launch-2020.aspx)



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