

OPENING HEARING 2 NOVEMBER 2021

EXPERT WITNESS STATEMENT OF NADIM HOURY

Member of the High Level Panel of Legal Experts on Media Freedom

1. My name is Nadim Houry. I am a member of the High Level Panel of Legal Experts on Media Freedom. An experienced human rights lawyer, I am currently the Executive Director of the Arab Reform Initiative, a leading think-tank working on democratic reforms in the Middle East & North Africa (MENA). Previously, I worked at Human Rights Watch for 14 years, including as deputy director of the MENA division and as director of the Terrorism and Counter-terrorism Program. I have worked on defending freedom of expression and media freedom in different contexts – from authoritarian countries to democracies using counter terrorism laws to muzzle certain legitimate forms of expression.
2. I am presenting my statement as a member of the High Level Panel of Legal Experts on Media Freedom and as the author of its report ‘Advice on Promoting More Effective Investigations into Abuses Against Journalists’. The High Level Panel is an independent and diverse group of leading lawyers and judges who convened in July 2019 to provide advice and recommendations to state members of the Media Freedom Coalition and its partners, including international organisations, to promote and protect a vibrant free press, and report on means of raising the cost to those who target journalists for their work. The report that I authored focuses specifically on developing recommendations to strengthen international efforts to promote more effective investigations into attacks on journalists and tackle persistent impunity. While its emphasis is on international efforts, it also reviews certain regional and national initiatives to improve investigations. The report was based on extensive consultations with key stakeholders and was endorsed by key institutions and individuals, including the International Bar Association’s Human Rights

Institute, the Association of European Journalists, Centre for Freedom of the Media, Committee to Protect Journalists, and Reporters Without Borders.

3. The report is premised on three key facts:
 - a) 86% of killings of journalists go unpunished. They are not successfully investigated or prosecuted.
 - b) This rampant impunity is not limited to countries experiencing armed conflict or general collapse of the rule of law. Actually, since 2017, most killings of journalists occur outside war zones. They occur in places like Mexico, Philippines, but increasingly in places previously considered safe for journalists, like Malta.
 - c) The situation is not getting better despite multiple and important initiatives at the international, regional and nation level. 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, and the overwhelming majority of investigations into such attacks remain inconclusive

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. For example, 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. The death squads sent by al-Qaeda to murder Charlie Hebdo satirists in Paris or from Saudi Arabia to murder Jamal Khashoggi in Istanbul also make journalists worldwide feel the threat.

5. 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, or interrogate powerful suspects.

6. 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. And this is the key difference between a regular crime on the street and an attack on a journalist. When investigating an attack on a journalist, there are powerful interests at every step of the way try to block the investigation. 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.

Measures/recommendations

7. So how do you break this vicious circle? The report recommends a three-pronged strategy to strengthen investigations into attacks on journalists through:

(A) Setting up a standing international Investigative Task Force

8. The report recommends the creation of a standing Investigative Task Force staffed by international experts specialized in various aspects of criminal investigations and prosecutions that can quickly deploy to crime scenes 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 address systemic issues such as the absence of a witness protection program or the need for forensic training.

9. Sending international experts to conduct criminal investigations or assist local investigations has proven effective in overcoming local capacity issues in many contexts – from countering terrorism to cross-border organized crime. But such deployments – when done in an adhoc manner - often require lengthy negotiations and logistical build-up which reduces their effectiveness. Hence the importance of a ready to deploy task force.
10. Ideally, a standing international task force dealing with a global problem would exist with a UN mandate and the report joins the growing number of voices calling for a permanent investigative body within the UN system. But the report recognises that – regrettably – the creation of a permanent UN investigative body does not seem to currently have political support. And until such time, there is a need to work on an alternative. Therefore, the report recommends that the countries that are committed to freedom of the media and the protection of journalists, including those who formed the Media Freedom Coalition, set up a multilateral Investigative Task Force.
11. 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 organizations working on documenting or investigating attacks on journalists.
12. A multilateral investigative task force set up by a group of like-minded countries – a sort of “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 less compromises.

- Its creation by a group of countries from different parts of the world - including many regional champions of media freedom - means that this group would provide political credibility and a deeper pool of talent than any unilateral or bilateral initiative. 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. The proposed multilateral Investigative Task Force is meant to support and strengthen existing UN, regional and national institutions and investigations by providing them with access to quickly deployable investigators – from forensic specialists to digital experts.
13. To ensure the success of the Investigative Task Force, countries that support it should commit sufficient financial resources or if a country is unable to commit funds, it should at the very least make available qualified nationals to assist the Task Force at no cost. Countries should also 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.

B) Strengthen Evidence-Gathering Efforts by NGOs

14. 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.
15. These include (i) untrained collection of physical or forensic evidence that could limit its value before a court if the chain of custody is not properly handled; (ii) protection of witnesses if NGOs take statements for purpose of possible prosecution; and (iii) re-traumatisation and conflicting statements that may result if victims and witnesses take part in multiple interviews, sometimes months or years apart. Accordingly, the report recommends disseminating 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 to ensure effective use of evidence gathered by NGOs in national jurisdictions

C. Increasing the political cost for perpetrators of attacks

16. One of the key issues to tackle remains how to raise the political cost at the international level for perpetrators of attacks on journalists. 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 UN Human Rights Council, there is still little or no political cost to governments and officials that attack journalists or purposely block or undermine investigations into such attacks.
17. 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 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. 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. 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.
18. 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.

19. The report calls on the UN Secretary General to expand on his reporting duties on attacks on journalists to the Security Council and the 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 “Encourages the Secretary-General to further intensify his efforts regarding the safety of journalists.”
20. The Secretary General would be able to compile information on attacks on journalists from a) 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, b) regional mechanisms which track attacks on journalists, and c) NGO efforts – including the very helpful indexes created by the Committee to Protect Journalists and Reporters without Borders. 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.
21. 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. The measures could be taken through a UN framework (for instance, a resolution at the General Assembly, Security Council or Human Rights Council) 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

Conclusion

22. In the face of threats to journalists and media freedom that are new in scale and in nature, we must adopt new forms of collaboration that adapt to new realities. Any successful effort will require increased collaboration and innovation between the UN, individual member states, and civil society. It cannot be business as usual. The Permanent Peoples’ Tribunal initiative is an important and innovative step in highlighting the need to move

from mere condemnation of attacks on journalists to actual justice and accountability. By highlighting the systemic nature of the problem, while also focusing on particular case studies, the indictment signals the need to address the issue of impunity on multiple levels. Ultimately, the corner stone of any serious effort to end impunity is getting investigators to crime scenes as fast as possible and ensuring that prosecutors are willing and have the ability go after the perpetrators. Building such local capacity takes time. In the meantime, the best way to start tackling this is to have a standing Investigative Task Force that can ensure quick deployments of international investigators and experts to assist in particular investigations while in parallel working to raise the political cost for perpetrators.

I confirm that the facts stated in this witness statement are true.

Date and Place: Paris, 31 October

Name expert witness and signature: **Nadim Houry**

ANNEXES:

Annex 1: Report ‘Advice on Promoting More Effective Investigations into Abuses Against Journalists’, High Level Panel of Legal Experts on Media Freedom (November 2020), <https://www.ibanet.org/MediaHandler?id=5A00CE8E-0D66-41E2-A04A-FFCC36F8C67D>

Annex 2: Report ‘A Pressing Concern: Protecting and Promoting Press Freedom by Strengthening Consular Support to Journalists at Risk’, High Level Panel of Legal Experts on Media Freedom (November 2020), <https://www.ibanet.org/Consular-Support-report-launch-2020>

Annex 3: Report ‘Report on the Use of Targeted Sanctions to Protect Journalists’, High Level Panel of Legal Experts on Media Freedom (February 2020), <https://www.ibanet.org/Media-Freedom-Sanctions-report-launch-2020>

The People's Tribunal
on the Murder of Journalists.

A Safer World For The Truth

Annex 4: Report 'Report on Providing Safe Refuge to Journalists at Risk', High Level Panel of Legal Experts on Media Freedom (November 2020), <https://www.ibanet.org/Safe-Refuge-report-launch-2020>

The People's Tribunal
on the Murder of Journalists.

A Safer World For The Truth