

A Safer World For The Truth



**PEOPLE'S TRIBUNAL ON THE
MURDER OF JOURNALISTS**

CASE FILE

OPENING HEARING 2 NOVEMBER 2021

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OVERVIEW

This case file contains a written overview of the proceedings of the opening hearing of the People's Tribunal on the Murder of Journalists, held on 2 November 2021. The case file contains the opening statement by the prosecution, the witness statements as submitted by the witnesses prior to the hearing, and the amicus briefs submitted by the International Association of Prosecutors, International Media Support and Media Defence. The appendix contains a non-exhaustive list of sources referred to by several of the witnesses and referenced by the prosecution, including some additional reports on impunity for murders of journalists covering specific themes and/or regions.

OPENING STATEMENT PROSECUTION

As Lead Prosecutor, I have the privilege of addressing you today.

It is a privilege to represent so many brave journalists from every corner of the world. And to represent the committed relatives and loved ones of victims, non-governmental organisations and advocates who have come together to make this Tribunal possible.

It is also a tragedy that we are here today. Over the past thirty years, more than 900 journalists were deliberately killed because of the information they uncovered.¹ They posed a threat to corrupt politicians, powerful criminals or armed forces - who were afraid to have their crimes and misconduct exposed.²

The statistics are plainly shocking: In more than 8 out of 10 murders, there has been no justice and no conviction of those responsible.³ This means that killing the truth has become one of the world's safest crimes.

Behind these anonymous statistics are the stories of real people. Journalists like Deyda Hydara in the Gambia, who kept publishing despite attacks, arrests, threats and restrictive media laws that tightened the grips on the Gambian press. He was murdered on 16 December 2004.⁴ Behind the statistics are the stories of newspaper journalists like Novaya Gazeta in Russia, who lost six colleagues since 2000. All were murdered in retaliation for their work.⁵ And then, there are the tireless relatives, friends and colleagues who have continued their fight for the truth. They demand and deserve the

¹ CPJ. Database of attacks on the press [journalists killed between 1992-2021, motive confirmed: murder], <https://cpi.org/data>

² Bartman, *The Repression of Boundary-Blurring Actors in Subnational Undemocratic Regimes: Empirical Explorations in Veracruz and Gujarat* 2020, <https://hdl.handle.net/11245.1/9e36b8e8-2ba4-4754-a7e8-f86d191c959f>; Hughes and Vorobyeva. *Explaining the killing of journalists in the contemporary era: The importance of hybrid regimes and subnational variations* 2019. Journalism, pp. 1-19

³ CPJ. Impunity Index 2021. <https://cpi.org/?p=138965>

⁴ RSF. *The Gambia, Deyda Hydara: the murder of a journalist under surveillance* 2005, <https://rsf.org/en/reports/deyda-hydara-murder-journalist-under-surveillance>

⁵ CPJ. Chechen official and preachers threaten Novaya Gazeta journalists 2017. <https://cpi.org/2017/04/chechen-official-and-preachers-threaten-novaya-gaz/>

truth about the deaths of their loved ones. Many of them will share their story with you today.

Death is not the price that should be paid for fulfilling an essential function in our societies: providing access to independent facts and information, and thereby holding those in power to account. And the damage is not done by killings alone. They are the canary in the coalmine: the alarming symptom of a press that is already under attack.

This is what Filipino journalist and Nobel Peace Prize-laureate Maria Ressa, one of our witnesses today, speaks about when she says: 'democracy dies by a thousand cuts'.

The first cuts are the laws that are enacted to effectively crumble long established freedoms.

More often than not, these legal attacks become an excuse for violence. For example, every time a false criminal accusation is made against Indian journalist Rana Ayyub, it comes with a wave of online hate and physical threats. Even changing her phone's SIM-card 52 times in one year could not stop the hate from reaching her.⁶ Laws become weapons in the hands of those afraid of the truth.

These legal attacks often achieve their goals: They force journalists to censor themselves, hand in their licenses, and fight aggressive lawsuits brought against them to discourage them from investigating.

The cuts deepen when these attacks blur the lines of how societies ought to treat their journalists. Politicians reinforce this trend when they publicly attack journalists and incite violence against them. Despite states' international human rights obligations to protect journalists and publicly defend their safety, too many political leaders have trampled on those protections. They did so when they called media 'the enemy of the American people'; when they waved mock rifles at journalists during press conferences,

⁶ Washington Post. *An Indian journalist has been trolled for years, Now U.N. experts say her life could be at risk*. 2018. <https://www.washingtonpost.com/news/worldviews/wp/2018/05/26/an-indian-journalist-has-been-trolled-for-years-now-u-n-experts-say-her-life-could-be-at-risk/>

and when they announced that being a journalist 'does not make you exempt from assassination'.⁷

Attacks and violence have led thousands of journalists to flee their countries, drop their pens or change their beat. The ones that persist in their investigations and reporting have to fearfully look over their shoulder and find that their work is being made to look suspicious. Thereby, the spiral of attacks and violence against journalists enables lies to be spread unchecked. This is what allows disinformation to enter and spoil our information systems.

The killings of journalists are the final, deepest and bloodiest cuts to our societies, to our public debate. They happen when the system is crumbling under the weight of legal and physical attacks on the press. They happen where states fail to protect journalists.

The murders of Miguel Ángel López Velasco, his wife Agustina, his son Misael and Yolanda Ordaz de la Cruz in Mexico are a painful example. Miguel, his son Misael and Yolanda worked at the Mexican newspaper Notiver, covering organized crime and drug cartels. Before Miguel was murdered together with his son and wife on 20 June 2011, he had received many threats. Despite those threats, their colleague Yolanda started investigating their murders. Then, one month later, she was found murdered too. Their colleagues at Notiver suspect Yolanda's murder is connected to her investigation into the deaths of Miguel and Misael. None of them received protection from the authorities and all of their murders remain unresolved to date.

In other cases, it is the state authorities themselves who play an active role in the elimination of critical voices in their country. Whether in times of war or peace, in hundreds of cases, state authorities are linked to ordering or executing the murders of journalists. The case of Nabil Al-Sharbaji is a striking example. Nabil was a journalist

⁷ New York Times. *'Enemy of the People': Trump Breaks Out This Phrase During Moments of Peak Criticism* 2017. <https://www.nytimes.com/2018/07/19/business/media/trump-media-enemy-of-the-people.html>; OCCRP. *Czech President Flashes Mock Rifle "at Journalists"* 2017. <https://www.occrp.org/en/daily/7167-czech-president-flashes-mock-rifle-at-journalists>; RSF, *Rodrigo Duterte*. 2021. <https://rsf.org/en/predator/rodrigo-duterte>

and activist in Syria. On 26 February 2012, he was arrested for the second time after identifying himself as a journalist to the authorities. He was detained in three different state prisons. His lawyers could not visit him, his family could only visit once. Then, in May 2015, they were officially notified that Nabil had died in prison. His cellmates have testified about the torture and maltreatment he sustained in state detention that led to his death. No one has been arrested for his murder, and no one has been convicted.

Often, states carefully hide their tracks. Sri Lankan journalist Lasantha Wickrematunge investigated the President of Sri Lanka, Mahinda Rajapaksa and the Secretary of Defence, Gotabaya Rajapaksa. His reporting upset them. They retaliated. They filed defamation suits, ordered his arrest, and publicly attacked his reputation. In the final days of his life, Lasantha was followed by members of Sri Lanka's armed forces. On 8 January 2009, he was assassinated on his way to work. Despite the strong indications that his attackers were associated with the army, the investigation into his death was obstructed. Evidence was destroyed, witnesses were attacked and investigators were told to halt their investigations, or forced to flee.

This is the context in which I bring this indictment, including the three cases on behalf of Miguel, Nabil and Lasantha, before this Tribunal.⁸ No authority has investigated their deaths. No court has heard the evidence. No court has opened its doors to their relatives, friends, colleagues and witnesses. No court has convicted their killers. And no court **can** examine the pattern of attacks that their deaths signify. Their deaths are part of a pattern of systemic violence against journalists in Sri Lanka, Syria and Mexico. A pattern we see in countries all over the world. A persistent culture of impunity prevents accountability for these crimes.

States' international obligations in these cases are crystal clear. In the indictment that I present to you today, we therefore ask you to not only pronounce a judgement on the role and responsibility of states for the cases of Lasantha, Nabil and Miguel, but to examine the systems of abuse of journalists that their cases represent: repeated violations committed by states against the press and the people's right to access to information.

⁸ Case details can be found in the indictment (<https://ptmurderofjournalists.org/indictment/>)

The witnesses at this opening hearing will testify to the causes and impact of this systemic abuse.

No court to date could, or wanted, to hear or decide these matters. That is why an international, historic and unique effort was undertaken to establish this Tribunal. You can hear the evidence, listen to the witnesses and pronounce a meaningful judgment in these matters. You can make the voices that were silenced heard.

I would like to conclude by reading to you from Lasantha Wickrematunge's final article, published on the day after his death.

"When finally I am killed, it will be the government that kills me. I hope my assassination will be seen not as a defeat of freedom but an inspiration for those who survive to step up their efforts. Indeed, I hope that it will help galvanise forces that will usher in a new era of human liberty in our beloved motherland. I also hope it will open the eyes of your President to the fact that however many are slaughtered in the name of patriotism, the human spirit will endure and flourish. Not all the Rajapaksas combined can kill that."

Lasantha was right. Maria Ressa, Rana Ayyub and many others continue to publish. Our witnesses today continue to fight for justice. Some have done so tirelessly for more than forty years, and continue to do so until the day of today. Thousands of citizens continue to raise their voices.

States continue to underestimate their strength and resilience. Today we start a process that will expose their actions. Their failure to protect. Their failure to investigate. Their failure to hear the evidence in open court. We stand in solidarity with all those who have suffered from these violations.

Thank you for your commitment to listen to their stories and pronounce a judgement. I will now turn the floor over to today's witnesses, who will set forth to Your Honours and to the public the case we present.

SUBMISSIONS BY FAMILY MEMBERS *On the occasion of the Opening Hearing*

Statement by Ahimsa Wickrematunge, daughter of Lasantha Wickrematunge

“For so many years, courts and governments have slammed the door on families of murdered journalists who seek nothing more than to bring those who killed their loved ones to justice. I am grateful that the People’s Tribunal will shine a light on who killed my father and why. This may well be the closest my family gets to having a real day in court. But I am hopeful. Perhaps when the tribunal lays out the full brutality of these murders, the bell will finally toll for those who killed journalists like my father without ever imagining that they would face any consequences for their barbarity.”

Statement by Yazmín López Solana, daughter of Miguel Ángel López Velasco

“La mayor dificultad para lograr justicia en el caso de mi familia, ha sido falta de interés en el caso por parte de las autoridades por lo cual se desencadena falta de pruebas, lo que ha derivado en una investigación NULA. Y el mayor impacto es la nula confiabilidad en las instituciones que deberían ser el brazo de quienes imparten justicia a como en este caso, al no hacer en 11 años una investigación VERDADERA, nos dejan sin JUSTICIA y sin VERDAD.”

Statement by Miguel Ángel López Solana, son of Miguel Ángel López Velasco

“Mi padre no creía en las amenazas porque más de una vez lo habían amenazado, no le gustaba la idea de vivir con miedo ni atemorizado, desafortunadamente los tiempos cambiaron y no logramos ver lo que se venía.

Lo de mi familia fue orquestado desde la cúpula del poder en turno, pues imagínese todo lo que lograron hacer durante un sexenio sin que nadie dijera nada por temor sembraron el miedo y terror que aún se vive y de alguna manera se debe de desterrar”.

WITNESS STATEMENTS

The People's Tribunal
on the Murder of Journalists.

A Safer World For The Truth

WITNESS STATEMENT OF JEROEN AKKERMANS

On the case of Stan Storimans

1. My name is Jeroen Akkermans. I am a Dutch television journalist at RTL. Since 2001, I have been a correspondent in Berlin. In 2008, my colleague and cameraman Stan Storimans and I travelled to Georgia to report on the 5-day war between Georgia and Russia. On the last day of the war, Stan and I travelled to Gori. The town was situated 20km behind frontlines and had been evacuated for fear of a Russian invasion. Stan and I tried to interview people who stayed behind in the ghost town.

2. A Russian Iskander missile was fired from a launch position on Russian territory into the center of a deserted city, with no military objects in the vicinity. The missile carried a cluster bomb warhead. Numerous explosions of metal fragments killed Stan and eleven Georgian citizens.

The pursuit of justice for Stan Storimans

3. Thirteen years later, the Courts still have not prosecuted any of the perpetrators, despite the fact that the evidence in our case is exceptionally strong. First of all, the perpetrators used an exclusive murder weapon, undisputedly belonging to Russian armed forces. The attack was registered by five security cameras around the square. Because of the weapon used, remnants of the missile on the crime site and registration on tape, we know for sure who is behind the attack: The 630th Iskander Training Separate Missile Battalion, based in the town of Znamensk at the Kapustin Yar missile test site.

4. In August 2008, the Dutch government conducted an official investigation in Gori ('Annex 1'). They confirmed that only the Russian army could have been responsible, because of the use of the 'exclusive' Iskander missile.

5. During the war, Georgia already filed its own inter-state case against Russia at the European Court of Human Rights. This case functions as an umbrella case for the individual applications against the Russian State from the relatives of the Georgian victims, the relatives of Stan Storimans, my Israeli colleague Zadok Yechezkel and me. The individual cases still remain undecided, but the Court took a decision in the inter-state case in January 2021.

6. The Court concluded that it saw "no effective control" over the warzone in Georgia during "the active phase of war", saying that "in the context of chaos" there was no form of "State agent authority and control" over individuals.

7. Consequently, the Court will consider violations of the Convention of Human Rights committed by the Russian Defendant only after the preliminary peace deal was signed by Russia and Georgia, noon August 12th. The victims on the square were killed 75 minutes earlier, which means that the Court will not take the Iskander attack into account.

8. During a public hearing in the same inter-state case at the Court for Human Rights, the Russian delegation denied the Iskander attack, simply by suggesting that the remnants on the crimesite were in fact stolen, by the Georgians and Americans, from the missile test area in Russia, about 1000 kilometers away from the crime site in Georgia. All just to frame the Russian army for the killings.

9. Despite the evidence on the table, the prospects of the case at the Court for Human Rights in Strasbourg look bleak. This is not only disappointing for our case, but also for cases to come. The ruling is setting a dangerous precedent. When even a war crime registered live on camera can be denied justice, it seems to signal that justice for victims of war is virtually impossible. Also the International Criminal Court looked into the case. It opened an investigation into possible violations during the war in Georgia, but only in 2015. It has already been signaled that this case will not bring justice for the victims of the Iskander-attack any closer, either.

10. This means that the denial seems to have worked fine for the Russians. Their defense strategy proved effective from the beginning. Back in 2009, the Russian President Medvedev,

announced a Russian counter-investigation, to overthrow the “wrong” conclusions of the official investigation done by the Dutch government in 2008. But the Russian counter-investigation never materialized. Four years after the promise made by his predecessor, President Putin told the Dutch Prime Minister Rutte that the case of Stan Storimans was closed, as far as the Russian President was concerned.

11. I do not think it is up to a President to close a case. Only a Court can do this. But as the years drag on, a case understandably disappears from the public agenda. The fundamental problem is that justice is often seen as a bottle of milk; with an expiry date. But no, without justice being done this case is not over. We must therefore continue the fight. If we allow the perpetrators to kill and avoid justice, they’ll kill again.

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

Date and Place: **Berlin, 29 October 2021**

Name witness and signature: **Jeroen Akkermans**

ANNEXES:

Annex 1: Verslag onderzoeksmissie Storimans (2008), Report Dutch investigation mission conducted in Gori. <https://zoek.officielebekendmakingen.nl/kst-31595-2-b1>

Annex 2: Georgia v. Russia, ECtHR judgment (2021), Judgement by the European Court of Human Rights, appl. no. 38263/08, <http://hudoc.echr.coe.int/fre?i=001-207757>

-WITNESS STATEMENT OF MATTHEW CARUANA GALIZIA

On the case of journalist Daphne Caruana Galizia

1. My name is Matthew Caruana Galizia, I am the son of Maltese journalist Daphne Caruana Galizia. My mother was murdered on 16 October 2017. I am the director of the Daphne Caruana Galizia Foundation, but I am delivering this witness statement as my mother's son.

2. My family has faced numerous obstacles in our pursuit of justice for the murder. Many of these obstacles began even before the murder: the more or less deliberate weakening of Maltese authorities and institutions, which facilitated corruption and impeded investigations. You could even say that this is what led to the murder. My mother was an investigative journalist and published information on high-level corruption. Based on the evidence she collected, a group of activists and opposition members were trying to start criminal investigations against implicated public officials. These investigations never moved forward due to the intricate network of the accused politicians, the investigators and the prosecutors which provided them with impunity. Nevertheless, these powerful figures came to see my mother as a threat: she was, to a large extent, the only person in Malta holding anyone to account. The government adopted mechanisms which consistently and systematically dehumanised her and made her the subject of hate, while persons from this corrupt network thought that all their problems would be solved if they would get rid of her entirely.

Obstacles to achieving justice after the murder

3. After the murder, the first obstacle to justice presented itself within an hour. The magistrate who was appointed to lead the investigation was someone my mother had investigated in the past. She had not only investigated this magistrate, but also testified against her. That same evening, we started proceedings to have her removed from the investigation. We soon discovered that the most senior police officer in charge of the murder investigation was married to a cabinet minister. We filed proceedings to have him removed from the case as well. Although the government resisted, the court decided in our favour. The government appealed the decision. Because of this, the matter dragged on for many months and valuable time was lost.

4. In addition to the criminal investigations, we called for a Public Inquiry to be established. The government opposed our public campaign and resisted every step of the way. They claimed that the Public Inquiry was unnecessary. The government also opposed calls by the Council of Europe to establish the inquiry, until the Council of Europe set them a deadline. At the last minute, the government announced it will conduct a Public Inquiry on its own terms and through persons it chose. Following the announcement, we had two months of negotiations with the government about the Inquiry, seeking to establish appropriate terms of reference and providing the Inquiry with protection of independence and impartiality. All this again delaying the process.

5. The government was also actively obstructing the murder investigation. For example, in the proceedings against Yorgen Fenech, who was indicted for the murder in August 2021, we discovered that the Prime Minister's Chief of Staff had leaked evidence concerning the people that have now been accused of the murder.

6. At the time of her death, my mother had 42 SLAPP (strategic lawsuit against public participation)-suits filed against her. Most of the cases were filed by Maltese politicians or businessmen whom my mother investigated. After the murder, they kept these cases going. This meant that the cases continued against my family. There were cases that were filed by the Prime Minister himself. This took up valuable time and resources. Mentally and physically, it was very draining, which was of course what the cases were intended to do. The claims against us prevented us from doing the work we should have been doing for the murder investigation.

7. One consequence of the obstacles and delays in investigation was the potential loss of evidence. Moreover, our suffering dragged on, and the trauma for the people of Malta dragged on. There was at least one year during which absolutely nothing happened. Had we not resisted so strongly, those responsible for the murder would have succeeded, due to the government officials' complicity in covering up the murder and delaying tactics adopted which at times appeared to completely destroy the investigation.

The push towards justice: international support and solidarity

8. The murder had a deeply chilling effect. Perhaps without consciously knowing, journalists are worried and afraid to report on corruption. More journalists than before stay away from these stories. Worse than that, no single important source has come to my family since the murder. Before the murder, many people shared information with my mother. Although some sources

connected to the criminal investigation approached a few key journalists after the murder, there has been an observable decline in the number of sources who are coming forward with information. Again, they are afraid to do so.

9. This is partially why investigating the corruption that led to the murder of my mother has been instrumental in making progress in the pursuit of justice. Understanding and continuing these corruption investigations simultaneously with the murder investigation, has been very important. We were supported by a group of international journalists who continued my mother's investigations. International press freedom NGOs worked together to campaign for justice. This led to a lot of international attention for this case.

10. The Council of Europe mobilised its various institutions, which set a lot of direct action in motion. The Secretary General of the Council of Europe set the deadline for the government to institute the Public Inquiry. The Parliamentary Assembly of the Council of Europe appointed Special Rapporteur Pieter Omtzigt to the case. The review of Malta's political system by MONEYVAL (Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism), the Venice Commission and GRECO (Group of States against Corruption) was really crucial and came at the right time. The evaluation by the different institutions of the Council of Europe focused on systems. Their intervention resulted in some systemic changes in Malta. For example, the separation of the Attorney General into the State Advocate and the Chief Prosecutor. All of this work was good and important. However, there is very little recourse at the Council of Europe level when it comes to specific cases of high-level corruption. In addition to focusing on systems, there should be more focus and action on implementation. There could be more tools at the Council of Europe level for cases of high level corruption.

11. Currently, seven people have been charged in the murder investigation. The first person, and currently the only one, who has been sentenced was one of the hitmen. He pleaded guilty as part of a plea deal. The two other hitmen have been indicted and are awaiting trial. The two people who supplied the bomb are undergoing pre-indictment hearings, and the person accused of masterminding the murder has been indicted and is currently awaiting trial. Despite this, the investigation is still ongoing while we as a family await the trial of the remaining six persons indicted with my mother's assassination and their conviction.

The need for systemic change

12. We have the feeling that we can never rest. Malta's institutions are still quite weak so things could change at any moment. I do believe that there is a chance for convictions but our justice system is really creaking and falling apart at the seams. Even in countries with the best performing justice systems, cases like this are difficult to prosecute. Impunity is the norm in 96% of the cases. It is a huge achievement for us to get to this stage. Yet, as I have noted, there were many obstacles that we had to overcome, including the resignation of the Prime Minister. I think this says a lot about the level of difficulty when it comes to achieving justice in these cases. At the same time, it says a lot about the potential for us to send an anti-impunity message, even when it comes at a great cost. Meanwhile, the hatred towards my mother which was the intended outcome of a government's well oiled machinery dehumanising her has spilled onto us as her family and onto few other journalists and activists who still dare to investigate and call out corruption and impunity. This is done within a context whereby the government itself, though found by the Public Inquiry to have been the orchestrator of such a machinery, has so far failed to formally and publicly denounce this culture of hatred and fully implement the Inquiry's recommendations to entrench press freedom as Malta's fourth pillar of democracy providing an enabling environment for journalists and has not started the process of reform proposed by the Inquiry in relation to how Malta can strengthen its legal framework on corruption and abuse of power.

13. This was one murder case in one of the smallest member states of the European Union. We will simply not be able to keep up if all of this international attention must be mobilised for just one case, considering all of the journalists that are murdered every year. It is impossible to mobilise this level of support for every single case, and it should not be necessary.

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

Date: 4 November 2021

Name witness and signature: **Matthew Caruana Galizia**

-WITNESS STATEMENT OF HATICE CENGIZ

On the case of the murder of journalist Jamal Khashoggi

1. My name is Hatice Cengiz. I am the widow of slain Washington Post editorialist Jamal Khashoggi, who was murdered inside the Saudi Consulate in Istanbul on 2 October 2018. Since that day, I have campaigned for truth and justice in the killing of Jamal, and for the international community to hold accountable those who ordered and planned the killing. I have delivered testimony to the United Nations Human Rights Council, the European Parliament, the US Congress, and various other national parliaments.

2. I lived in London around a year after Jamal's death, in 2019. When I was living there, they followed me. Recently, the Pegasus investigation showed that my phone was hacked in the days after the murder. I was in fear after the killing for a long time. The shock and fear were not just for my own life. The murder changed my view of humanity and the world and the meaning of life.

Why I want justice for Jamal

3. Jamal lost his life. We must not forget what happened. This is what motivates me and gives me the energy to keep going. My energy comes from inside me, because I think we should talk about this issue. It's a human issue, there is no meaning in my life if we forget about this. As individuals, we live a social life, a personal life, a cultural life, but there is also a responsibility that we have as humans. I am not doing this to be an activist, not to become a celebrity. This case touches upon important values. It touches upon the protection of other people in Saudi-Arabia, for example in prison.

4. In some cases, States are quick to act against human rights violations by other countries and speak out. But at the same time, States forget these values when they want to. States are not afraid to use their power, for example via ambassadors, when they want to pressure another country. Why are they then silent sometimes? Why do I not find an ambassador with me? They do not call me, they do not stand with me. They are silent when they want.

5. I want to keep public attention for the case, because everyone else is trying to make it go away. The Turkish authorities were very good in the beginning and now they want it to go away. The U.S. and the international community are precisely the same. The current attitude is: 'We've already dealt with this, can we move on?' That attitude is unimaginable with murder cases in national jurisdictions. Somehow people accept this when cases happen across countries. People must not close their eyes. When this case is no longer in the media, it does not disappear. There has to be a consequence.

Steps and obstacles to justice

6. We have undertaken multiple cases to hold the perpetrators, and particularly the Saudi Crown Prince, to account. There has been a criminal case and investigation in Istanbul, in which I am the main complainant. This case has been going on for a long time, and it is against persons in absentia. It is an important proceeding and has the potential to bring justice and lead to international arrest warrants. Some of the people involved have been charged, others still need to be - including the Saudi Crown Prince. The Turkish authorities have severely delayed the proceedings, and are so far unwilling to charge the Crown Prince.

7. We have made many submissions to the United Nations, to national governments, to national parliaments and the European parliament. We have made appeals to implement sanctions, which States can do under their national jurisdictions. The United Nations also has the power to do that. We also campaign to stop the cultural washing or sports washing of the Crown Prince, for example in the recent take-over of football club Newcastle United. We will continue to do that for any other sports or cultural engagements he undertakes to try to improve his tarnished image.

8. We also started a civil case in the U.S, in which the Crown Prince has also been served. This case has been challenged by Saudi-Arabia on the basis of immunity. Across all of these cases, the main obstacle is that governments are reluctant to act against the Crown Prince of Saudi Arabia, someone who is perceived as the de facto leader of the country. He is not the head of State. He should not receive immunity. This is not a crime for which you should get immunity. State authorities only focus on those lower down, when the Crown Prince was the one responsible.

States need to take action

9. The Turkish authorities need to speed up the process, they cannot delay it for this long. They need to get access to the information in the U.S. and present that to the Court, and issue an arrest warrant, in particular against the Crown Prince himself.

10. Moreover, governments need to implement sanctions to make sure he cannot travel around and undertake initiatives like buying sports clubs. They need to make sure that he cannot travel to their countries without being arrested and interviewed. We cannot allow someone of whom even the CIA has established that he was responsible for this murder, to travel around and go unpunished. The U.S. Court should start to consider this as a matter of urgency and provide compensation for the damages. There should be reparations, so the persons concerned cannot get away with it. Governments should also make available all the information they have on the case.

11. The Saudi crown prince needs to be held to account. A man who is capable of these acts, should not become king. There are rules in your country, there is a law in my country, there are international laws. People like him need to understand that the world has changed. People are calling me 'brave' or a 'hero', but I want to be a normal person. I should not have to do all these things to get justice. Now, the community and the institutions should do their turn. The governments and their leaders, and not just in Turkey or in the United States. Everywhere.

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

Date and Place: 31 October 2021, Istanbul

Name witness and signature: **Hatice Cengiz**

WITNESS STATEMENT OF PAVLA HOLCOVÁ

On the case of the murder of Slovak journalist Ján Kuciak

1. My name is Pavla Holcová. I am an investigative journalist. I started my investigative journalism career in 2013. Before that, I was a human rights defender in Cuba. I worked with dissident journalists and with the families of political prisoners in Cuba. In 2013, I founded the Czech Centre for Investigative Journalism that is called *investigace.cz*. The Czech Centre investigates cases of corruption and organised crime. I was recently involved in founding a similar centre in Slovakia, The Investigative Centre of Ján Kuciak.

2. I am also a member of the OCCRP (Organised Crime and Corruption Reporting Project) network, which includes 400 journalists globally. In this network, we investigate and develop stories based on data leaks or information from sources. When we cover a topic in our own country we share the data and findings.

3. I was a colleague of journalist Ján Kuciak, who was murdered on 21 February 2018. I met Ján due to my work at the Czech Centre for Investigative Journalism. A Swedish television network approached me to ask for help with a story about the working conditions of the Slovak workers who were building a bridge in Sweden. I was introduced to Ján Kuciak, who was still studying at that time. He agreed to do the story. When working on the story, I found out that he is really talented and enthusiastic. After this story, Ján became my first point of contact every time I needed any information from Slovakia. We were chatting almost daily about different stories.

4. The first big project we worked on together was the Panama Papers five years ago. The purpose of this project was to expose high profile, powerful people who are hiding their assets in offshore companies. When we first launched the Panama Papers project, Slovakia was not represented on the project. Ján decided to publish these stories in Slovakia and he called me and asked, 'Could I come from Bratislava to Prague?'. He just took the things he had with him and came to Prague.

He had no toothbrush, he had no money, he just had his computer. We stayed in my living room and just went through the database and searched for the Slovak stories and Slovak data. While working together on this project we became close friends.

Threats

5. I have been receiving threats throughout the time I have worked as an investigative journalist. I have received anonymous threatening letters sent to the office or to my home address, and threats on social media networks, for example on Twitter and Facebook. The letters accuse us of being paid by the secret service, wanting to overthrow the government or working for Soros. The threats became concrete in 2013 when we published a story on organised crime in the Balkans. We started receiving messages like 'we know where you live', 'you are very cheeky' and 'you may end up in a bad way'.

6. In addition, we are targets of smear campaigns by politicians or some media outlets that have connections to the government or to politicians. For example, the Czech President held a press conference while holding a gun with an inscription "to journalists" and the Prime Minister has called journalists prostitutes for writing for money.

The murder of Ján Kuciak

7. In 2017, Ján was investigating the activities of influential Slovak businessman Marián Kočner. He was reporting on Kočner's frauds and pointing out what the police had failed to investigate. Ján was very factual, he based his investigation on paper and money trails. These stories made the businessman very angry because it is difficult to argue with facts.

8. One day, Kočner called Ján and threatened to dig up dirt on him. Ján called me to ask for advice on what to do. I suggested he should report the threat to the police but the police did not take any action. I believe it was the businessman who decided to hire someone who would kill Ján. Ján's body was found together with his fiancée's, Martina Kušnírová, in their home on 26 February 2018.

Aftermath of the murder: exposing corruption in the police and judiciary

9. The murder of Ján, as well as his fiancée Martina, sent shockwaves through Slovakia. They had chosen a wrong target: someone who was very young and independent of political pressure. People decided to go to the streets to protest and to ask for an unbiased independent

investigation into the murders. As a result of the protests, the government and the president of the police resigned.

10. After Ján was murdered, the OCCRP created an emergency team to start our own investigation because we were not sure that the case would be properly investigated. Ján's family knew that me and him were friends and that we had worked together so they shared a lot of information and documents about the investigations. We put together all those pieces of information and started to expose how the murder happened.

11. At the end of 2019, we received a data leak of 70 TB of data from the police investigation. We created a team in Slovakia, consisting of around 15 journalists, and created what we called Kočner's library. It took the team 3-4 months to sort and go through all the leaked documents and footage. In 2020, we started publishing the stories based on these facts and reported not only on the murder case, but on the whole corrupt system in Slovakia.

Systemic change in the aftermath of the murder investigation

12. The new police investigators conducted a proper investigation. The case was assigned to a young policeman who did not have links to the political system. He was doing everything by the book and therefore, it was almost impossible to put evidence he collected aside. The supervision by Europol was also important for the independence of the investigation. The top management of the Slovak police saw that there was someone looking over their shoulder so they could not hide, delete, or destroy evidence.

13. The police exposed not only the murder case but also the corruption within the system. This was a big part of the case. The judiciary was totally corrupt in Slovakia. That is why the businessman believed that even if he killed a journalist, he would not be punished because he had judges on his payroll - and not only judges but also prosecutors. The investigators got the cellphone of the businessman in which there was encrypted communication between him and several judges. He was sending messages to the judges telling them how to rule, and he was selling it as a service to other businessmen.

14. In February 2020, Marián Kočner was sentenced to prison for 19 years but not for the murder of Ján and Martina. He was sentenced for financial fraud. Kočner and the broker of the murder, Alena Zsuzsová, were acquitted of the murder due to the lack of evidence in September 2020. However, the prosecution appealed the decision. The Supreme Court ordered a retrial in June

2021 saying that not all the evidence was taken into account and that the evidence was not interpreted correctly. Therefore, the murder case is still not closed.

15. The evidence from the police investigation was a really good starting point for many other investigations. Eventually, 20 judges were indicted in Slovakia in 2020, including judges from the Supreme Court. More changes in Slovakia are still underway. The new government was elected in 2020 because they promised a revenge on the old system. Many very prominent people were arrested, detained and charged.

16. However, the threats and smear campaigns against journalists are still ongoing. For example, in the beginning of October of this year we published a story from the Pandora Papers about the Czech Prime Minister who bought real estate in France through an offshore scheme. A couple of days after that, the threats and smear campaign started.

17. However, I actually feel safer now after the murder of Ján. I think that now powerful people could see what could be the impact of killing a journalist. They see that the whole system they have built over the years can collapse. I believe that we sent a strong message. You can kill a journalist but you cannot kill a story because we are going to publish all the stories that the killing was meant to prevent. Moreover, we will not only publish this story but we will focus on the perpetrator because we want to understand the reasons for them to feel untouchable and to feel that their crimes are never going to be investigated.

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

Date and Place: 28 October, Prague

Name witness and signature; **Pavla Holcová**

-WITNESS STATEMENT OF GERT KUIPER
On the case of the murder of journalist Jan Kuiper

1. My name is Gert Kuiper. I am the youngest brother of the Dutch journalist Jan Kuiper. In March 1982, Jan travelled to El Salvador together with his colleagues Koos Koster, Joop Willemsen and Hans ter Laag for the Dutch broadcasting network IKON. On 17 March 1982, they were travelling into guerrilla territory when they were ambushed by government forces and killed.

Forty years of pursuing justice: investigations by the UN, the Netherlands and El Salvador

2. The case is almost forty years old. In the first years after the murder, the ongoing civil war complicated any investigation or prosecution. As relatives, we did initiate a case in El Salvador shortly after the murder. However, the judge in question received death threats and was forced to flee the country. For the duration of the civil war, the case was at a standstill. We realized there was not much we could do until the end of the war.

3. The civil war in El Salvador ended in 1992. After the war, the United Nations (UN) sent a Truth Commission to El Salvador, which published its report in 1993 ('Annex 1'). The commission also investigated the case of my brother and his colleagues, and concluded that the attack had been planned in advance. The report mentions several names, including that of colonel Mario Reyes Mena, who was held responsible for planning the attack. I received a copy of the report, but was never granted access to the evidence on which it was based. After the publication of the report, not much happened in the case.

4. Around 2009, I saw an opportunity when a former journalist, Mauricio Funes, won the elections in El Salvador. We had meetings with Salvadoran organizations, had conversations among the relatives and wrote to human rights organizations. We did take some small steps, but made little progress. In 2016, I suddenly received a visit from a Dutch prosecutor and two detectives. They informed me that the Dutch Public Prosecution Service had started an investigation in 2012.

5. I was pleasantly surprised to hear that the Dutch prosecutor had picked up the case. They told me that they had to redo a lot of the evidence gathering, as the UN Truth Commission obtained information from various sources on the basis of strict confidentiality. At the same time the Dutch prosecutor does not share much information about the ongoing investigation with the relatives of the 4 Dutch reporters. However, they inform us whenever relevant.

6. At the same time, there have been developments in El Salvador. In 2016, the 1993 Amnesty Law was declared unconstitutional. In 2018, I filed a case against colonel Reyes Mena in El Salvador. Exactly 39 years after the murder, on 17 March 2021, it was announced that the case would proceed to trial. In July 2021, the indictment was filed, including charges against Reyes Mena and 25 of his soldiers. The Dutch Ministry of Foreign Affairs currently provides financial support to a collective of lawyers, who represent us, as relatives, in the proceedings in El Salvador.

7. The next step is for the judge in El Salvador to start conducting interviews on the basis of the indictment, and build a case file to enable the extradition of Mr Reyes Mena, who resides in the United States. The judge started this process, but it is unclear how much still needs to be done. My biggest concern at the moment is that she will wait too long or will be pressured into taking a long time. If that happens, I am afraid that we will not get justice anymore. I therefore try to keep attention for the case in Dutch and international media alive to keep some pressure on the authorities in El Salvador.

8. My primary motivation to keep pursuing this case is that I want to know why they were murdered. I would of course like to see Mr Reyes Mena in jail, but that will take several years and he will be an old man by then. More importantly, I want to know the reason for the murder, and I want to know more about who was involved in the planning of the attack. My contacts in El Salvador have informed me that Mr Reyes Mena is not a very high-profile target, and that it is unlikely that he would have taken the decision to murder these four men on his own volition.

Role of the United States in undermining the pursuit of the case

9. We are very grateful that the Dutch Ministry of Foreign Affairs is facilitating our legal representation in El Salvador, and the Dutch embassy in Costa Rica is closely following the case. The attitude of the Dutch government was very different in the first years after the murder. The government was shocked by the murder, but was very reluctant to get involved. Minutes from Dutch cabinet meetings after the murder, recently revealed that the U.S. government exerted pressure on the Dutch to not dig too deeply into the circumstances of the journalists' death.

10. I suspect that this was because there were U.S. military advisors present in El Salvador to advise and train the Salvadorian armed forces at the time of the murder ('Annex 1'). Over the years, I have become convinced that a U.S. military advisor was involved in, or had knowledge of, the planning of the murder. Research by investigative journalists from the Netherlands shows that a U.S. military advisor had knowledge of the plan prior to the murder ('Annex 2').

11. There was a parallel fact finding & truth investigation in El Salvador at the time, without releasing the results. I learned about this investigation several years ago from a credible source within the UN. At the same time the 1993 Truth Commission started investigating, a parallel truth commission was active in El Salvador. He also told me that the UN Truth Commission was not given access to the findings of that commission, whose report was never published.

Current status of the case

12. As a layman, it can be hard to understand the process. The Dutch Public Prosecutor does not give us much information, and I am quite skeptical about the ambition of the authorities in El Salvador to pursue the case. The situation there is complex, and there is not a lot of eagerness to revisit this case and other atrocities committed during the civil war. After all these years, it can be difficult to keep attention for the case going. I feel that it is now or never. We need a breakthrough soon: the Dutch government will not finance the Salvadorian lawyers forever, and Mr Mena is ageing. I hope that this case could help create a precedent for other war crimes cases in El Salvador. We are lucky that we are supported by our government, but most other victims do not have this privilege.

14. Most importantly, I want to know why my brother and his colleagues were murdered, and to what extent the United States were involved in the planning of the attack. It is upsetting that whenever these kinds of attacks happen and countries like the U.S. might be involved, the case gets buried. This was one of the things that my brother fought against in his work as a journalist: large power blocks that act as they please and escape accountability for their actions in less powerful countries. Knowing that is what motivates me to keep pursuing this case.

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

This statement was given in Dutch on 8 October 2021.

Date and Place: 28 October, Madrid

Name witness and signature: **Gert Kuiper**

ANNEXES:

Annex 1: Report of the United Nations Truth Commission on El Salvador (1993),
<http://www.derechos.org/nizkor/salvador/informes/truth.html>

Annex 2: Zembla-documentary 'In Cold Blood' (2018),
<https://www.bnnvara.nl/zembla/artikelen/zembla-finds-brains-behind-murder-of-ikon-journalists>

WITNESS STATEMENT OF KARINNA MOSKALENKO

On the cases of journalists Anna Politkovskaya, Dmitry Kholodov and Yuri Shchekochikhin

1. My name is Karinna Moskalenko. I am a practicing lawyer in Russia. My legal career started in 1977 at the Moscow City Bar Association. I have worked on cases concerning many different issues. During the time of the Soviet Union, I did not notice the systemic flaws in the court system or within the law enforcement bodies, because I had grown up in this society. I was, however, still critical about several matters, especially concerning the conditions of prisoners. I was fighting for my clients and fighting against violations. 1990 was a key year for me. In 1990, I discovered all of the cases of repression and rights violations that were taking place in the Soviet Union. That year, I was invited to the United States to visit the Supreme Court, regional courts and prisons. This visit made me realise that something was structurally wrong in the legal and judicial system of the Soviet Union.

2. I have litigated several cases of murders of journalists in Russia and before international judicial and quasi-judicial bodies. I represented the applicants who brought a case on the violation of the right to life of journalist Anna Politkovskaya to the European Court of Human Rights. I was also involved in the complaint to the UN Human Rights Committee concerning the death of journalist Dmitry Kholodov. This year, I submitted documentation to the UN Human Rights Committee in relation to the death of journalist and politician Yuri Shchekochikhin. As a lawyer, I can deliver testimony on the cases that I have been involved with. I will focus on the facts of three cases: Dmitry Kholodov, Yuri Shchekochikhin and Anna Politkovskaya.

Dmitry Kholodov

3. Dmitry Kholodov, an investigative journalist for the newspaper Moskovsky Komsomolets, was assassinated in an explosion in 1994. Dmitry had investigated crimes committed by high ranking military commanders. He was criticising the military staff and had concrete physical evidence of economic crimes, including bribery and corruption. Some people were arrested for Dmitry's murder, but they were acquitted. Dmitry's parents and I submitted the case to the UN

Human Rights Committee claiming that there had been a violation of the right to life due to inadequate investigation. We won this case before the UN Human Rights Committee.

Yuri Shchekochikhin

4. In 2003, investigative journalist Yuri Shchekochikhin was poisoned, although the Russian authorities did not recognise it as a murder. At the time, Shchekochikhin was a member of the State Duma. He was the co-chair of the Committee on fighting against corruption. In 2021, I submitted the documentation claiming a violation of the right to life to the UN Human Rights Committee. The case was accepted recently.

Anna Politkovskaya

5. Journalist Anna Politkovskaya worked for the newspaper Novaya Gazeta. During her last years, Anna received several threats. She was murdered in 2006. Until her last day, Anna feared that key persons in Russian politics would one day approach her. She also said that in some of her interviews. We advised Anna to file a request to the general prosecutor to prove that someone was threatening her and that the state must take responsibility if something happened to her. Many different people were arrested for Anna's murder but many were acquitted. Six months after Anna's murder, we filed a case at the European Court of Human Rights claiming a violation of the right to life because we did not believe that the investigation would provide an effective remedy. We won this case. The European Court of Human Rights found that the investigation had not been adequate because the authorities had not taken all the necessary measures.

Patterns in the failure to investigate

6. These three cases illustrate that there is a pattern. The Russian authorities handle such political murders in a similar manner. Firstly, the authorities often denied that a sudden death of a journalist was a murder. For instance, the authorities are still insisting that Yuri Shchekochikhin was not killed. In fact, the authorities stopped the investigation into Yuri's murder by saying that no criminal offence had been committed. In 2006, Alexander Litvinenko died in the United Kingdom of similar causes like Yuri Shchekochikhin. Alexander Litvinenko was a former officer of the Russian Federal Security Service (FSB). During the investigation of his death, the British police discovered that he had been poisoned. Nobody in Russia has recognised that Yuri Shchekochikhin was poisoned in a similar way to Alexander Litvinenko. Anna Politkovskaya was at least recognised by the authorities as a murder victim.

8. In all of the cases that we have brought before international bodies, we claim that the Russian government is unwilling to investigate the murders. This is our key point. They think that if they do not investigate, they are not liable. Yet, every time an international tribunal or quasi-judicial body says that the Russian state is responsible for the death of these persons, it is because they have not investigated.

9. In the case of Yuri Shchekochikhin the conclusion was already made after the pre-investigation check. The European Court of Human Rights has said in many judgments that this is not equivalent to an adequate investigation. The authorities started an investigation into Yuri Shchekochikhin's murder five years after his death. In the first year, his sons were trying to get access to his medical documents but the authorities refused them. When the investigation started later, the medical documentation had been destroyed.

10. When Anna was killed, I knew from the very first day that her killing will not be resolved. In the first six months, it became clear to us lawyers that nothing will be discovered. The authorities were very active in the beginning but they were pretending to conduct an investigation. They invited hundreds of witnesses and collected many protocols of interrogation instead of investigating relevant phone numbers. There are still telephone numbers that have never been identified. Anna's house entrance was under the scrutiny of different cameras but the CCTV footage was not properly searched in the beginning. Anna's case is still not closed. They cannot stop the investigation because of the judgment by the European Court of Human Rights. Yet, they are again pretending to conduct an investigation without taking some of the necessary actions.

11. Even when investigations are pursued, the perpetrators are often acquitted because of the failure of the investigation. When American journalist Paul Klebnikov was killed in 2004, I warned his family that there is a pattern in these cases. Everyone will be acquitted and that is what happened. Paul's killer has not been discovered and the case is now closed. This is what happened in Dmitri's case and Anna's case as well. The state investigators, deliberately or not, fail to collect evidence and information according to the proper procedures. They create a case file that cannot impress the court, the judge, or the juries, who therefore acquit all of the suspects, because they are shocked by the discrepancies in the case file.

12. This pattern was also evident in the cases of Dmitry Kholodov and Anna Politkovskaya. The military staff who were accused in Dmitry Kholodov's murder were acquitted and they received

huge compensations. Even after the convictions of the material perpetrators in Anna's case, those who ordered the murder, the masterminds, were never pursued. We have fair trial rights, but with this type of suspects, it is assumed that they are innocent.

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

Date and Place: 1 November, Amsterdam

Name witness and signature: **Karina Moskalenko**

EXPERT WITNESS STATEMENTS

The People's Tribunal
on the Murder of Journalists.

A Safer World For The Truth

EXPERT WITNESS STATEMENT OF RAISSA CARRILLO

Legal director of the Fundación para la Libertad de Prensa (FLIP)

1. My name is Raissa Carrillo. I am a lawyer by education. I have an LL.M. in international human rights law from Northwestern University. Since March 2020, I have been the coordinator for protection and legal defense of The Foundation for Press Freedom (FLIP) is a non-governmental organization that promotes press freedom in Colombia and oversees the right of citizens to be informed. Previously I have worked both in the private and public sector in Colombia, at different law firms and at the Constitutional Court of Colombia. In 2019, I started working with projects for the promotion of human rights. One of these projects was for Case Matrix Network, an NGO that provides technical advice on the collection of evidence to investigate and prosecute war crimes and human rights violations.

2. FLIP has been working for 25 years to promote free press and free speech in a very complex context and has assisted more than 1000 Colombian journalists at risk. Part of our work is to follow up judicial proceedings on attacks against freedom of expression, contributing toward its proper progress, and promoting actions that help reduce impunity. Its main areas of action are: documentation and monitoring; dialogue with State authorities and litigation; advice to journalists and training and awareness.

3. FLIP directly represents victims of crimes against the press in different jurisdictions. This work gives us a first hand view on the shapes of violence against the press, the different types of crimes against the press and the lack of action from the state at different levels. It gives us insights into how proper investigation is, or is not, undertaken as well as how judicial proceedings are addressed by different authorities.

Impunity in Colombia

4. Unfortunately, Colombia is known for being one of the most violent countries against the press in the region. Since the 90s, we have not been able to overcome the context of violence and the targeted attacks against the press. Journalists are still the frequent targets of death threats, physical attacks, abduction and murder. Only in the past year, we documented more than 449 attacks and 525 attacks already this year. The figures of violence increased despite the Peace Accord.

5. There was a decrease of 20% in the number of murders of journalists between 2016 and 2020, compared to the period between 2011-2015 according to UNESCO. However, this is not the case in Colombia: between 2011 and 2015, 7 journalists were assassinated, while, between 2016 and 2021, 8 journalists were assassinated. All of them for reasons related to the development of their journalistic profession, as FLIP was able to establish in early missions to the places where the murders were committed.

6. In our work monitoring impunity of the murder of journalists for reasons related to the profession. We have mapped [162 cases](#) of murders of journalists in Colombia between 1977 and 2021. The most recent case was presented on September 19 of this year, journalist Marcos Efraín Moltalvo was assassinated in Tuluá, in events that have not yet been clarified, but about which, according to FLIP, there are sufficient indications to affirm that his homicide is related to his work as journalist.

7. Impunity is the general rule. In 78.8% of the cases a conviction has not been handed down. Only in one case, the case of Orlando Sierra, has full justice been achieved. Out of the 162 cases, around a hundred prescribed, victims did not have access to justice. In many of these cases, due to neglect during the investigations and the judicial proceedings. Although the Attorney General's Office declares these murders to be crimes against humanity, to continue the investigative work, these declarations only have symbolic value. They are not followed by any measures to advance seriously on the investigation.

8. Out of these 162 cases, only in four of these cases have resulted in a conviction of the material author of the crime and in one case, the entire chain of command involved in the crime was found guilty. Regarding sanctions, in the case of the murder of Luis Antonio Peralta Cuéllar, the responsible was sentenced to 58 years in prison- We continue to monitor this case because the

case is under review. This conviction has the potential to send a clear message of non-tolerance to murders against journalists.

Causes of impunity and obstacles to justice

9. Based on our experience, structural problems hinder the implementation of these standards. The lack of unified information systems to obtain a real diagnosis of the problem of violence against journalists, investigations that do not explore the motivations of the perpetrators related to the journalistic profession, the lack of physical resources and trained personnel, long periods of procedural inactivity, and flaws on the independence of the judges are some of the factors that hinder access to justice and that give rise to the high levels of impunity.

10. Impunity relies mostly on neglect during the investigation. On the one hand, a common problem is that regional investigators do not link murders nor threats against journalists to their profession. This is a big challenge in Colombia. It may be partly due to the prejudice that authorities have towards the press. On the other hand, the investigation strategy does not link the different aggressions against one journalist, preventing the context analysis and the full understanding of the risks. All these, triggers further neglect for the timely collection of evidence which has a negative and direct effect on the prosecution. The case of Jineth Bedoya Lima is an example. She had been threatened for 20 years, subject to kidnapping, tortured and sexually assaulted. During the investigation of the different aggressions, the collection of evidence from authorities was poor due to prejudices regarding gender based violence, the reluctance to link the aggressions to her work and separate investigations have not led to full access to justice at national level. The lack of coordination between prosecutors is an obstacle to providing a good outcome of the investigation and to avoiding unnecessary delays.

11. The second reason is the low enforcement of the laws. Colombia has adopted international and regional human rights standards on the investigations of crimes against the press. Although the State has implemented strategies to advance the investigation and punishment of those responsible for these crimes, they have been insufficient and ineffective. Particularly, at the local levels, the prosecutors and judges need more training to be in the capacity to sanction. There is a clear gap between local and national authorities regarding their familiarity with the standards of protection and investigation of crimes against journalists, as well as the resources to perform their job.

12. A third reason of impunity in the murder of journalists, is the potential state responsibility. Most of the crimes against journalists happen when they have reported on topics such as corruption or armed conflict, thus involving the government, the army, the police or other national or municipal authorities. In these situations it is highly probable that the justice system does not provide effective remedy; either because of corruption or because the investigators do not want to incriminate a state agent as this will lead to state responsibility. This may be another reason why the investigation procedures do not advance.

13. A fourth reason is that sometimes the victims do not want to be a part of litigation processes because of the lack of guarantees. Judges have similar fears, we know of multiple judges and investigators afraid to tackle these cases. If they do not have minimum safeguards in the justice system, the situation is very unlikely to change.

14. Fifth, the lack of coherent data is one of the main concerns for the work against impunity as it prevents us from having a clear understanding of this problem. At the national level, the lack of proper data and understanding of the issue raises a question: is impunity a structural problem, how can we tackle it from a technical point of view, is it a resource problem or a political problem? If it were not for the journalists talking about impunity, it would not be visible anywhere. Journalists are often investigating the aggressions themselves. They are replacing the state in its obligation to investigate.

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

Date and Place: 30 October, Bogota

Name witness and signature: **Raissa Carrillo**

ANNEXES:

Annex 1: Database of 162 murders of journalists in Colombia. FLIP (2021)

<https://flip.org.co/index.php/es/impunidad-casos>

EXPERT WITNESS STATEMENT OF CHRISTOPHE DELOIRE

Secretary-General of Reporters Without Borders

1. My name is Christophe Deloire, I am a journalist and the Secretary General of Reporters Without Borders (RSF). I previously worked as an investigative journalist for several medias in France, authored documentaries and books and was the director of the main journalism school in Paris, France. I am also the President of the recently launched Forum on Information and Democracy.

2. Capacity in which witness provides statement: Secretary General of Reporters Without Borders (RSF), an international independent organization working to promote and defend the freedom, pluralism and independence of journalism and those who embody these ideals.

3. Chronological account of the facts on which the expert witness can provide evidence, using headings and subheadings if necessary: I, Christophe Deloire, hereby solemnly testify the following to be considered by the Peoples' Tribunal on the Murder of Journalists.

Violence and crime against journalists at their pick

4. 990 journalists and media staff were killed across the globe between 2010 and 2020 because, or in the course, of their job to inform the public, according to RSF tally. Since the beginning of 2021, 39 have already been killed.

5. War zones like Afghanistan or Syria remain extremely dangerous for journalists : since the beginning of the war in Syria in 2011, RSF counts 270 journalists (professional or not) and media personnel killed. Over the same period of the last 10 years, 63 were killed in Afghanistan. But countries that are not "war zones" can also be deadly for journalists : since 2015, 62 journalists were killed in Mexico, 24 in India, 17 in the Philippines.

6. The World Press Freedom Index's indicator on abuses against journalists, which takes into account not only the number of attacks but also their severity, shows a 17% worsening of the situation in the world in 2020 compared to the previous year, 13% in Africa and 15% in South America. In the EU itself, the number of abuses against journalists doubled over the past two years, and 14 journalists have been killed in the EU since 2015, counting in particular the 8 victims of the 2015 Charlie Hebdo attacks in France, the murder of Daphne Carunana Galizia in Malta in 2017, of Jan Kuciak in Slovakia in 2018, and, in 2021, the murders of Giorgos Karaivaz in Greece and Peter De Vries in the Netherlands.

7. The murders of Daphne, Jan, Giorgos and Peter in particular remain unpunished to date, as the masterminds still go free.

8. Same goes in other parts of the world, where the brutal murder of Jamal Khashoggi in 2018 or the assassination of Anna Politovskaia in Russia in 2006 remain unpunished, like remain unpunished the three situations before your Tribunal.

Impunity as the *de facto* rule

9. As the Prosecutor's indictment recalls, the vast majority of the crimes committed against journalists are unpunished. Various figures exist, from 86% to 90% impunity rate but all confirm the same reality : the criminal, civil or administrative responsibility of the perpetrators of murders against journalists is almost never questioned or sanctioned. States responsibility for failure to respect and protect press freedom and journalists is hardly sanctioned and when exceptionally judgements are delivered, they are not implemented.

10. The situation of course varies from one country to another. In some countries, impunity is almost total. In Mexico, according to official figures - the figures published in 2018 by the special prosecutor for crimes against freedom of expression, FEADLE - 99,6% of the investigations in the cases of assassinations and enforced disappearances of journalists fail.

Causes and consequences for journalists and beyond, society

11. What are the causes of this situation ? Failed states, lack of independence of the judiciary, corruption, lack of ability and most frequently, political will to investigate and prosecute

including collusion of the authorities with organized crime or armed groups, lack of appropriate mechanisms at the international level... The causes are many, and vary from one place to another.

12. But impunity for the murder of a journalist is always a message : the murder aims at silencing a journalist. Impunity aims at silencing all journalists. It is a message to all : “keep silent or die”. To murder a journalist is to reduce the capacity of citizens to form their opinion and to determine themselves freely, it is to deprive society of its capacity to know. Murderers target mainly investigative journalists, who are at the forefront of establishing the facts necessary to understand conflicts, organized crime, corruption, inequalities, technological and scientific upheavals, or environmental issues.

13. The lack of knowledge and the trivialization of crimes lead to the indifference of societies and finally to oblivion. This systematic impunity strikes at the heart of democracy, as journalism is not only essential, an inherent condition of it.

14. The absence of independent investigation, criminal prosecution, fair trial, judicial sanction, and reparation for the victims constitutes a flagrant violation of their rights, as well as an incitement to crime as long as an effective judicial risk is not materialized and embodied.

Calling for justice is not enough, acting for justice is long overdue

15. Sadly, nothing of this is new. In 2006 the UN security council adopted resolution 1738 on the protection of journalists, media professionals and associated personnel in armed conflicts, which emphasized *‘the responsibility of States to (...) end impunity and to prosecute those responsible for serious violations of international humanitarian law’*. In 2015, in another resolution on the protection of journalists (2222), the Security Council stressed that *“impunity for crimes committed against journalists in armed conflict remains a significant challenge”, “strongly condemn(ed)” this impunity “which in turn may contribute to the recurrence of these acts”, and “urge(d) Member States to take appropriate steps to (...) conduct impartial, independent and effective investigations within their jurisdiction and to bring perpetrators of such crimes to justice”*.

16. The UN General Assembly also adopted numerous resolutions on the issue of impunity for crimes against journalists, in 2013, 2014, 2015, 2017, 2019...

17. In 2012, the UN “Plan of action for the safety of journalists and the issue of impunity” aimed to “*formulate a comprehensive, coherent, and action-oriented UN-wide approach to the safety of journalists and the issue of impunity.*” But it must be recognized that this declared determination has not led to real change. Impunity remains a challenge. The claim for justice must change from declaration to implementation. The role of this tribunal is to show it can change, to show that the cost for the murder of a journalist can rise drastically because States that fall short of their international obligations are sanctioned as per international standards.

Solutions

What else can be done? This session of the peoples’ tribunal is a key occasion to highlight more than perspectives, initiatives.

- *The need for justice in real life*

18. I want to stress it before this Tribunal loud and clear: what is needed first is justice, justice in real life, meaning swift investigations, prosecutions and accountability, by independent courts at the local level.

19. It is the responsibility of States to ensure justice is delivered, and the role of this tribunal is to remind States of their responsibility.

20. International and regional courts have an essential role to play in this regard. Important decisions are rendered, like very recently by the European Court of Human Rights on Turkey, concerning the issue of insults to the president, or by the Inter-American Court of Human Rights on Colombia.

21. But international justice is far, its decisions are rare and come years after the crime, and only consider States’ responsibility. This is not enough.

22. It is the individual and criminal responsibility of perpetrators that must be triggered. To that end, the independence of the judiciary must be guaranteed, the means available to investigators, prosecutors and judges must be strengthened. **And all available means to 4 trigger individual responsibility must be explored. States bear primary responsibility for this,**

yet the prevailing impunity rate speaks for itself. This is why RSF decided to launch its own litigation strategy.

23. RSF aims at reversing this spiral of impunity, supporting the efforts of journalists or their families seeking justice, and fighting back against perpetrators and their impunity.

24. We decide to explore and seize all possible litigation avenues, against any type of actor involved (individual responsibility, corporate responsibility, state responsibility), before any kind of relevant jurisdiction - giving priority to local courts. When local justice is not willing or able to deliver justice, RSF explores and eventually triggers extraterritorial recourse procedures, domestic and international, on any appropriate and applicable legal basis.

25. Implementing this strategy, since 2019 RSF has filed 76 complaints and formal filings on crimes and exactions against journalists before domestic courts, international tribunals and international quasi-judicial mechanisms, concerning situations in 64 States.

26. Among many other examples, RSF filed complaints before the ICC, concerning the situation of journalists in Gaza, in Afghanistan, in Mexico. In Mexico, RSF argues that a crime against humanity has been committed against journalists between 2006 and 2018, during the “war on drugs” : an attack against a civilian population, which is widespread, and which is systematic and committed in furtherance of a State policy, a policy that is characterized in particular by the systematic and deliberate failure to act by the authorities to punish the authors of these crimes.

27. RSF has also filed complaints before national courts : In Mexico, RSF is acting before the special prosecutor for crimes against freedom of expression (FEADLE) to get the reopening of the investigation in the case of Regina Martinez Perez, assassinated in 2012, and is taking the case before the Supreme court; in Sweden, against the president of Eritrea for his role in the detention since 2001 of journalist Dawit Isaak ; in France, for police violence against journalists during protests. RSF has filed complaints against companies such as Facebook, in France, for “deceptive commercial practices” on the grounds that the social media company’s promises to provide a “safe” and “error-free” online environment are contradicted by the large-scale proliferation of hate speech and false information on its networks. RSF also acted against the Israeli company NSO with complaints in France alongside 21 journalists from 7 countries.

28. RSF filed complaints targetting individuals : the Saudi crown prince, with a complaint in Germany for crime against humanity, or against powerful individuals involved in the murder of Daphne Caruana Galizia, with a complaint in France before the financial prosecutor. RSF filed also a universal jurisdiction-based complaint against self-proclaimed president Lukachenko in Lithuania for the “hijacking with terrorist intent” of the plane of Belarussian journalist Raman Pratashevich and his following abduction and detention.

29. The road is long and the challenge is huge when considering how often prosecutors disregard investigating the connection between the murder and the journalistic activity of the victim. RSF proudly contributed to the 2020 UNESCO/International Association of Prosecutors Guidelines for prosecutors in investigating crimes against journalists. Yet it is self-explaining that such guidelines remain necessary in 2020.

- *Strengthen the international mechanisms to protect journalists, promote accountability for crimes against them*

30. Indeed the many resolutions adopted by the UN have not changed the situation on the ground. There is an urgent need for a concrete and comprehensive mechanism for the implementation of international law on the protection and safety of journalists, as well as the fight against impunity for crimes committed against them. What we need is a mechanism dedicated to the protection of journalists, an authoritative voice for a much tighter control of the conformity of national laws and practices with international standards, a stronger coordination of the UN efforts and a renewed, fresh and determined cooperation with domestic protection actors.

31. Accordingly RSF has been advocating for the creation of a mandate for a Special Representative of the United Nations Secretary-General on the Safety of Journalists (SRSJ), in order to put in place a permanent structure at the center of the United Nations system, capable of significantly reinforcing the actions carried out by UNESCO, the UN special procedures, the United Nations Security Council and the General Assembly. It would also be a means of strengthening the actions and mechanisms developed at the regional and national levels. Time has come.

- *Structuring entities should be held accountable*

32. And justice in the case of assassinated journalists, if absolutely essential, yet is not enough. In today's world, where propaganda, disinformation, hate and calls for murders of, in particular journalists, flourish online and spread much faster than reliable information, the role and responsibility of actors that shape the public sphere must also be questioned. There is a strong need for regulation of the digital sphere, and a strong need of accountability of the digital space structuring entities.

33. RSF undertook to trigger Facebook's responsibility by filing a criminal complaint based on French consumer law. RSF's complaint against Facebook demonstrates the company's deceptive commercial practice when allegedly fighting against hate including death threats against journalists and Covid19 related disinformation whereas it committed to provide a secure and error-free environment in its terms of services including its Standards of the community.

34. But RSF considers rules should be adapted or even created to confront new realities. This why RSF also undertook to work at the international level with all stakeholders involved, on a normative initiative : the "Information and Democracy" process impuled by RSF aims to create democratic guarantees in the global communication and information space - in particular by strengthening the obligations and responsibility of online platforms as regards the impact of their activities on the public sphere.

35. With an International Declaration for Information and Democracy, drafted in 2018 by a Commission of 25 international prominent figures, co-presided by RSF secretary general and nobel peace prize laureate Shirin Ebadi and comprising, among others, the future peace prize laureate Maria Ressa, the Nobel laureate in Economic Sciences Joseph Stiglitz, or the former UN High Commissioner for Human Rights Navy Pillay, RSF impuled a process which allowed for the adoption, by 43 States to date, of an International partnership for information and democracy. This non-binding agreement aims to promote and implement democratic principles in the global information and communication space. To further this effort, a Forum for information and democracy was established by 11 independent organizations from different backgrounds and regions. Its tasks are to issue recommendations to the different stakeholders of the global information and communication space, to facilitate the emergence of regulatory and self-regulatory responses by and for the different stakeholders, and to support the social function of journalism through innovative responses and recommendations.

36. The Forum has already issued a series of studies and recommendations, concerning in particular the issue of infodemics, or the sustainability of the media. At the Summit for Information and Democracy held on the sidelines of the UN General Assembly on 24 September 2021, the Forum announced the up-coming creation of an International Observatory on Information and Democracy. The prefiguration group will be co-chaired by the US academic Shoshana Zuboff and by the former secretary-general of the Organisation for Economic Cooperation and Development (OECD), Angel Gurría.

37. RSF is working in particular with the EU to ensure the principles of the Partnership and the recommendations of the Forum are taken into consideration, in particular within the project of Digital services act currently discussed at the European Parliament, and within the project of a European Media Freedom Act. In order for the EU to drastically strengthen the obligations and responsibility of online platforms.

38. In such a context of extreme deterioration of the public debate and increased dangers for the exercise of free, pluralistic and independent journalism, your tribunal's mission is all the most important. Putting an end to the vicious circle of impunity, highlighting the primary responsibility of States to guarantee press freedom, protect journalists and sanction the violation of their obligation to do so is all the most urgent and necessary.

RSF keeps at the disposal of this Tribunal for any further expertise it may need.

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

Paris, 29 October 2021

Christophe Deloire

Secretary General of Reporters Without Borders (RSF)

EXPERT WITNESS STATEMENT OF HAYDEE DIJKSTAL

On behalf of the family of journalist Yama Siawash

1. My name is Haydee Dijkstal and I am Barrister at 33 Bedford Row Chambers in London practicing international criminal and international human rights law before international criminal tribunals, and before international and regional human rights courts and mechanisms.

2. On 7 November 2020, Afghan journalist Mr Yama Siawash was targeted and killed in an attack in Kabul, Afghanistan. He was killed by a car bomb which exploded shortly after Yama entered the vehicle. I have been instructed to act as international counsel for the family of Mr Yama Siawash, which includes his parents and siblings.

3. It is noted that in addition to Yama's work as a journalist and TV presenter, his father is a journalist and owner of Armaghan e Melli newspaper in Afghanistan, and his three brothers are all also journalists.

4. As counsel for the Siawash family, I deliver this testimony on behalf of, and on the instructions of, the family of Mr Yama Siawash to raise the situation of Yama's murder, how his killing is part of a pattern of killings of journalists and members of the media in Afghanistan, and how the challenges the Siawash family encountered when seeking genuine and transparent justice measures fit within the wider context of impunity for crimes against journalists in Afghanistan.

5. This testimony is based on information and materials from the family about Yama's career as a journalist and TV presenter in Afghanistan, the threats and pressure he received as a result of his work, and his killing. It is also based on information from the family as to steps they have taken to seek justice for Yama's killing and challenges they have faced, as well as, reports from the United Nations, human rights organisations and other publicly available information on the wider context of attacks on journalists in Afghanistan and impunity for these crimes.

Yama Siawash's work as a journalist in Afghanistan

6. Yama Siawash was well-known in Afghanistan for his work reporting on issues of politics and governance in Afghanistan. Yama became best known for his role as a journalist and TV presenter at Tolo News. As noted by his father, Yama was “born into a family of journalists” and was surrounded by media and journalism during his youth and throughout his career. His family describes how Yama loved his work as a journalist and how his goals aimed at seeking the truth on difficult topics for the people of Afghanistan. For example, his sister says that Yama “spoke about serving his people and raising their voice to the world through journalism”, and sought to give “hope for the oppressed and poor people of Afghanistan.” His brother explains that Yama “believed in the right to truth and was committed to using journalism to expose the truth and serve his country.”

7. In Afghanistan, Yama was particularly known for his criticisms of Government policies and his willingness to press and confront Government officials during TV interviews. As a journalist and TV presenter on the television program Farahkhabar, he posed tough questions and challenged his guests on controversial political issues and developments in Afghanistan. His guests included Government officials and other prominent figures. His family shared how journalism allowed him to reveal the truth. For example, his brother describes that through his style of journalism Yama sought to use “his voice to shed light on the realities of the country.”

8. The family explain that due to the popularity of his show and the challenging conversations he prompted, Yama's show made a significant impact in Afghanistan. His interviews were widely followed by not only the public, but also the Government and other influential groups in Afghanistan. The impact and influence of Yama's journalism was demonstrated by the fact that his interviews resulted in Government officials' dismissals.⁹

9. The family also report that Yama's work resulted in ongoing threats against him as well as pressure and confrontations against him and his employer by prominent individuals in Afghanistan seeking to stop his work as a journalist and TV presenter. Senior officials were hostile to Yama and opposed his journalism, and in some instances, physically acted out in anger against Yama. The family state that it was apparent to them that Yama's work was increasingly

⁹ See, for example, video: <https://www.youtube.com/watch?v=2efVMimc6xo>.

putting him under real threat and danger. This was confirmed when a local NGO on free press and protection of journalists contacted Yama to warn him about his safety due to his work, and advised him to leave the country for his protection. His brothers state that Yama understood the risks of continuing his work as a journalist, but was dedicated to exposing corruption and other controversial issues in Afghanistan.

10. In 2016, Yama's family explain that he felt pressure to resign due to his work as a journalist. The family further report that despite his resignation, they still felt that his safety and life were at risk if he stayed in Afghanistan, and it was therefore decided that he would leave Afghanistan for a few years in order to allow for the threats and pressure to subside and for the situation to change such that he could safely return to Afghanistan. Towards the end of 2019, the family describe how Yama's love for his country and desire to serve his people motivated him to return to Afghanistan, and towards the end of 2019, Yama returned with the hope that enough time had passed to allow him to safely return home.

The killing of journalist, Yama Siawash

11. Yama was killed on the morning of 7 November 2020. Upon returning to Afghanistan, the family describe how the Government-owned central bank repeatedly approached and recruited him outside the normal recruitment process, and how he eventually accepted the position of media advisor for the bank. He had recently started the position on the day he was killed.

12. On 7 November, Yama was collected in a Government-owned vehicle. At about 7:35am, when Yama entered the vehicle, 2 kilograms of military grade RDX explosives, which were embedded within the vehicle, were remotely detonated.¹⁰ Because the car bomb exploded after Yama entered the vehicle, the explosion occurred very close to the Siawash family home and was heard by the members of the family who ran to the scene of the explosion.

13. Yama's father and brothers describe arriving quickly to the scene of the explosion and seeing a burning car and a lifeless body, and then finding Yama's body at the scene. They describe how the power of the explosion caused Yama's body to fly several meters from the explosion, and that

¹⁰ See, for example, United Nations Assistance Mission in Afghanistan, Special Report: Killing of Human Rights Defenders, Journalists and Media Workers in Afghanistan, 2018-2021, February 2021, p. 26; and Annual Report 2020, Afghan Journalists Safety Committee, pp. 2, 9.

they found him with his leg detached from his body, and his eyes open. They describe their devastation and the deep pain from finding his body and together collecting his remains.

14. Each of the family members' accounts make clear that Yama was integral to their family, and how the loss of Yama when he was killed severely impacted their family life; turning their world upside down and causing great emotional distress and grief. They also describe how their mental pain and suffering was further compounded by fear that other members of the Siawash family might be targeted - both as journalists and due to their efforts to seek justice and accountability for Yama's murder. It resulted in the family no longer feeling safe in Afghanistan.

Yama's targeted killing as part of the wider context of violations against journalists in Afghanistan

15. The attack on Yama was deliberate and targeted. Information about the remote detonation of 2 kilograms of military grade RDX explosives embedded in the Government-owned vehicle demonstrates that deliberate steps were taken to target and attack the passengers of the vehicle.¹¹ This is particularly true considering that the vehicle, including its GPS, was in the control of the Government within a secure and surveilled parking lot before the explosion. The explosives were remotely detonated soon after Yama entered the vehicle, with the two other passengers having been in the car and driving for a longer period to specifically pick up Yama; indicating that he was the target of the attack.

16. Given the threats, pressure and hostility Yama received as a result of his work, the family strongly feel that Yama was targeted because of his ongoing and well-known profile as a journalist and TV presenter, and for his work in journalism to raise controversial issues. His brother states that although "Yama believed that enough time had passed that he would be safe in Afghanistan again", the family now feel that "once a critic or a dissident is viewed as a threat, they will always be considered a threat, no matter passage of time." The family believe that it was Yama's work as a journalist, and his exercise of his right to free expression through his work, that led to him being targeted and murdered.

¹¹ See, Kabul University attackers "blew themselves up" to mask their identities: Saleh, atnnews, 9 November 2020. See also, United Nations Assistance Mission in Afghanistan, Special Report: Killing of Human Rights Defenders, Journalists and Media Workers in Afghanistan, 2018-2021, February 2021, p. 26; and Annual Report 2020, Afghan Journalists Safety Committee, pp. 2, 9. See also, Afghanistan vehicle bomb kills former TV presenter, The Guardian, 7 November 2021; Afghanistan violence: Former TV presenter Yama Siawash killed, BBC, 7 November 2021; Former Afghan TV presenter killed in explosion in Kabul, Aljazeera, 7 November 2020.

17. It is noted that the attack which took Yama's life was not a random occurrence or an isolated act, but can be considered part of a pattern of attacks and targeted assassinations of journalists and members of the media in Afghanistan, particularly from 2018 to 2021. His targeted killing is part of an escalated series of attacks against journalists in the final months of 2020 which has been described by one NGO to be part of a "bloody campaign of targeted killings of journalists" which "started with the fatal attack against Yama Siawash."¹²

18. The pattern of threats, targeting and killing of journalists in Afghanistan has been widely documented by NGOs, international organisations and Governments as a consistent threat. In a February 2021 report, the UN Assistance Mission in Afghanistan stated that "Afghanistan is one of the most dangerous countries in the world for journalists;" documenting that in the period between 1 January 2018 and 31 January 2021, 33 members of the media were killed in Afghanistan.¹³ The list of those journalists, TV presenters and media staff killed, including Yama Siawash, demonstrates the consistency and frequency in which members of the media are targeted, attacked and killed "in reprisal for their work."¹⁴

19. The year 2020 marked a dramatic increase in attacks against journalists;¹⁵ particularly in the final months of 2020, and in the same period when Yama was killed.¹⁶ This increase was documented, for example, within the Annual Report of 2020 by the Afghan Journalists Safety Committee which stated that the "dramatically increased levels of direct attacks and assassinations of journalists at the end of 2020 has created widespread panic among media outlets and journalists across Afghanistan,"¹⁷ and "indicat[es] a strategic campaign of terror against journalists and media workers."¹⁸ Notably, this documentation considered the journalists killed in attacks, but did not include attacks, which amplify these numbers, whereby journalists

¹² Annual Report 2020, Afghan Journalists Safety Committee, p. 3.

¹³ United Nations Assistance Mission in Afghanistan, Special Report: Killing of Human Rights Defenders, Journalists and Media Workers in Afghanistan, 2018-2021, February 2021, p. 7.

¹⁴ See, for example, Number of journalists murdered in reprisal for reporting nearly doubles, Committee to Protect Journalists, 19 December 2018. See also, RSF's 2018 round-up of deadly attacks and abuses against journalists – figures up in all categories, Reporters Without Borders, 14 December 2018; and Afghanistan Ranked The Most Dangerous Country For Journalists In 2018 As Peace Talks Progress, Civicus, 12 February 2019.

¹⁵ See, Afghan Journalists Stepping Down Amid Threats, Violence, Intimidation, Gandhara, 4 February 2021.

¹⁶ US Department of State, Bureau of Democracy, Human Rights and Labor, 2020 Country Reports on Human Rights Practices: Afghanistan, p. 2. See also, Annual Report 2020, Afghan Journalists Safety Committee, p. 3.

¹⁷ Annual Report 2020, Afghan Journalists Safety Committee, p. 1.

¹⁸ *Id.*, at pp. 1, 3.

were threatened or survived attack “by various groups such as government officials, Taliban, Daesh and warlords.”¹⁹

20. Notable are the multiple sources of the threats. Reports document how journalists are threatened, targeted and attacked from “all sides”²⁰ with “[j]ournalists fac[ing] the threat of harassment and attack by ISIS-K, the Taliban, and government-linked figures attempting to influence how they were covered in the news.”²¹

Obstacles and challenges to pursuing justice for Yama’s killing

21. Despite taking immediate steps to seek justice domestically in Afghanistan, the Siawash family encountered obstacles and challenges to their request for the Government to undertake a genuine and transparent investigation into the perpetrators of Yama’s death.

22. The family requested the Government transparently share, or at least discuss, with the family information which might reveal those most responsible, including CCTV and surveillance records, and GPS data. The family raised that important information to assist a genuine investigation was accessible to the Government, or could be obtained from other sources. However, the family encountered what they felt were contradictory statements from the Government as to any evidence and investigation, and a lack of willingness by the Government to openly discuss and be transparent about the state of any inquiries, not only with the public,²² but particularly with the family.

23. It was not only the family which raised the inability to meaningfully engage with the Government or be assured of a transparent and genuine investigation, but also civil society and the media, which shared concern about the credibility and transparency of purported inquiries into Yama’s death.²³ Concerns raised included lack of cooperation from the Government-owned

¹⁹ Annual Report 2020, Afghan Journalists Safety Committee, p. 3.

²⁰ See, “Stop Reporting or We’ll Kill Your Family”: Threats to Media Freedom in Afghanistan, Human Rights Watch, 2015, p. 1.

²¹ US Department of State, Bureau of Democracy, Human Rights and Labor, 2020 Country Reports on Human Rights Practices: Afghanistan, p. 19. See also, “Stop Reporting or We’ll Kill Your Family”: Threats to Media Freedom in Afghanistan, Human Rights Watch, 2015, p. 1; and Afghan Journalists Safety Committee, AJSC Six Month Report 2019, p. 1.

²² See, for example, video of President Ghani on questions of the investigation into Yama’s killing: <https://www.facebook.com/watch/?v=796083750997485>.

²³ See, for example, Govt Institutions Provide Conflicting Reports on Kabul Attack, ToloNews, 14 December 2020; Ambiguity Continues Around Probe into Attack on Yama Siawash, ToloNews, 12 December 2020; Calls Mount for Details of Attack on Yama Siawash, ToloNews, 9 December 2020; Probe Delayed into Attack on Yama Siawash, 2 Others: Documents, ToloNews, 8 December 2020; Kabul Attack: Media Not Convinced as Govt Shares CCTV Footage, ToloNews, 25 November 2020; Govt Agencies Yet to Give Details of Attack on Yama Siawash, ToloNews, 24 November 2020; Security Agencies Refuse to Give Information about Kabul

bank on requests for information relevant to the attack.²⁴ CCTV shared with the media led journalists to voice that the selective footage “does not provide convincing answers to their legitimate questions.”²⁵

24. These concerns resulted in civil society repeatedly raising the on-going impunity in Yama’s case. For example, the Afghan Journalists Safety Committee raised Yama’s case to note that although “the government assured Siawash’s family, the general public and the media that progress in the investigation into his killing was underway”, the Government has failed to share information with any of these parties.²⁶ In January 2021, activists and residents throughout the country “signed a petition calling for a thorough probe into the attack” on Yama,²⁷ and Human Rights Watch noted that in the same month protests were held “in Kabul over the government’s failure to investigate the killing of journalist Yama Siawash.”²⁸ In July 2021, Human Rights Watch raised that the Government’s consistent failings in investigating attacks on journalists “were highlighted in the case of Yama Siawash.”²⁹ The organisation’s report stated that “[a]lthough government officials promised a thorough investigation, no details of any investigation have been made public.”³⁰

25. The family look to many of these same concerns, along with the Government’s lack of transparency and unresponsiveness to the family, as having led them to skepticism. This included when the Government claimed that 11 members of the Taliban were arrested in connection with the murder, but the process lacked transparency. Yama’s father said “[w]e cannot understand why the government will not be transparent with us and this has raised my suspicions.” It caused distrust, similar to that expressed within the media and in civil society, about whether the Government and judiciary in Afghanistan genuinely wished to and were able to find the truth of who is most responsible for Yama’s death.

Attack, ToloNews, 23 November 2020; Central Bank Denies Information on Kabul Attack: Journalists, ToloNews, 21 November 2020; Yama Siawash’s Father Seeks Probe in Attack on His Son, ToloNews, 18 November 2020.

²⁴ Kabul Attack Probe Team Faces Lack of Cooperation by Central Bank, ToloNews, 16 November 2020; Probe Team Still Waiting for CCTV Footage of Siawash’s Vehicle, ToloNews, 26 January 2021; Probe Team Still Waiting for CCTV Footage of Siawash’s Vehicle, ToloNews, 26 January 2021; Security Agencies Refuse to Give Information about Kabul Attack, ToloNews, 23 November 2020.

²⁵ Kabul Attack: Media Not Convinced as Govt Shares CCTV Footage, ToloNews, 25 November 2020

²⁶ Afghan Journalists Safety Committee, Annual Report 2020, p. 9.

²⁷ Dozens Sign Petition Calling for Probe into Attack on Siawash, ToloNews, 23 January 2021.

²⁸ Afghanistan: Targeted Killings of Civilians Escalate, Human Rights Watch, 16 March 2021.

²⁹ Arrest of Afghan Journalists Highlights Larger Concerns, Human Rights Watch, 30 July 2021.

³⁰ Arrest of Afghan Journalists Highlights Larger Concerns, Human Rights Watch, 30 July 2021.

26. The difficulties of the Siawash family in getting answers and seeking justice for Yama's killing were taken despite their fear of further attacks against their family. The family explained the fear of reprisal they felt while seeking justice. For example, one member of the family said "we felt that the people who have assassinated [Yama] will stand against us for sure and they will try to kill each and every one of our family members as we raise our voice demanding justice." This fear disrupted their lives and led to their displacement from Afghanistan.

27. After feeling that the Afghan Government had failed to thoroughly and genuinely investigate the attack, and with their fear that pushing further for transparent justice in Afghanistan would put the family at additional risk, they decided to seek justice internationally before international mechanisms and courts.

The wider context of impunity for attacks and killings of journalists in Afghanistan

28. Just as the attack which took Yama's life is part of the pattern of attacks on journalists in Afghanistan, the inability of his family to access a genuine and transparent judicial remedy or to seek the truth mirrors the pattern of impunity associated with violence against journalists in Afghanistan.

29. A culture of impunity for attacks and killings of journalists has been widely reported. For example, in 2021, the United Nations Assistance Mission in Afghanistan stated that "[i]n 9 out of 10 cases" concerning the killing of journalists or human rights defenders in Afghanistan, "impunity for such violations and abuses is total" and "prevails."³¹ The Afghan Journalists Safety Committee has described a "lack of serious investigation by the government regarding the killing of journalists,"³² and Human Rights Watch has "doubt[ed] the Afghan government's capacity and willingness to bring alleged perpetrators to justice" ... "[b]ased on [its] research in the Afghan justice system."³³ It led the Afghanistan Independent Human Rights Commission, Human Rights Watch and other organisations in June 2021 to call on the United Nations to establish an international fact-finding mission to investigate the on-going, and escalating, attacks against journalists.³⁴

³¹ United Nations Assistance Mission in Afghanistan, Special Report: Killing of Human Rights Defenders, Journalists and Media Workers in Afghanistan, 2018-2021, February 2021, p. 4

³² Afghan Journalists Safety Committee, Annual Report 2020, p. 9.

³³ Q&A: The International Criminal Court and the United States, Human Rights Watch, 2 September 2020.

³⁴ AIHRC Calls for International Fact-Finding delegation to Inquiry Crimes against Civilians, *didpress.com*, 30 October 2021; and Arrest of Afghan Journalists Highlights Larger Concerns, Human Rights Watch, 30 July 2021.

30. Following the events in Afghanistan in August 2021, which saw a change in national authorities, the ability of the Siawash family, and other families of murdered journalists in Afghanistan, to access genuine justice within the Afghan judicial system is in further question. This is supported by the recent decision of the International Criminal Court Prosecutor which seeks to resume the ICC investigation into crimes committed in Afghanistan after concluding that “there is no longer the prospect of genuine and effective domestic investigations.”³⁵

31. The challenges the Siawash family confronted with seeking justice domestically, combined with questions of whether a functioning independent and impartial judicial system exists in Afghanistan after recent developments, leaves the family feeling that justice for their family, and other families of murdered journalists, is not possible in Afghanistan.

I confirm that the facts stated in this witness statement are true to the best of my knowledge.

Date and Place: 31 October 2021, London

Name witness and signature: Haydee Dijkstal

³⁵ See, Statement of the Prosecutor of the International Criminal Court, Karim A. A. Khan QC, following the application for an expedited order under article 18(2) seeking authorisation to resume investigations in the Situation in Afghanistan, ICC Press Release, 27 September 2021; and Situation in the Islamic Republic of Afghanistan, Request to authorise resumption of investigation under article 18(2) of the Statute, ICC-02/17-161, 27 September 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>

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>

EXPERT WITNESS STATEMENT OF FATOU JAGNE SENGHORE

Regional Director West-Africa of ARTICLE 19

1. My name is Fatou Jagne Senghore. I am a human rights and freedom of expression advocate. From 2002 to 2005, I led ARTICLE 19 work with the African Commission on Human and Peoples' Rights for the adoption of the Declaration on Freedom of Expression in Africa and the mechanism of the Special Rapporteur on Freedom of Expression in Africa between 2002 to 2004. In 2010, I established the regional office of West Africa for ARTICLE 19 in Senegal.

2. ARTICLE 19 is a human rights organisation specialised in freedom of expression. The organisation has been active in Africa for the past three decades. When we established the office in West Africa, we decided that it would be key to focus on the protection of journalists among others. The protection of journalists was very important in relation to the Gambia, where many human rights violations were committed by the government at the time of the repressive regime of President Yahya Jammeh. However, not many actors were working in the Gambia because it is such a small country and also, the climate of fear was reigning. We have also done work on the protection of journalists in Mali after the first coup d'état in 2012, and in Burkina Faso during the transition after the collapse of the Compaoré regime. There were many challenges in Burkina Faso, especially after the brief military took over during the transition. There was significant aggression against journalists.

4. We conduct a lot of safety training for journalists, set up safety protocols, standard routines and support the journalists with knowledge on what to do in case they are subjected to violence and ensure legal advice is available to them. We have seen that this has helped quite a lot in the years after 2010. Many journalists who are threatened or asked to report to the police now contact their lawyers. Before, journalists would have been intimidated to report without leaving a trace. We thought it was important to create these routines that make calling a lawyer the first move of action in cases of threats or duress. This ensures that we are able to trace them. An important aspect of this work has also been training lawyers who can advise and assist journalists when they face difficulties, arrest or legal proceedings. This work has really progressed over the years.

In addition to supporting journalists with legal advice and training, we help journalists facing serious threats to reach safe havens when the situation requires.

Development of press freedom in West-Africa

5. In the 1990s, when most of the military regimes in the region ended, the political space in these countries opened up and there was a lot of progress in media freedom. Yet some countries, for example the Gambia, did not go through these changes in the 1990s due to the military takeover of 1994 which negated human rights and media freedom until its fall in 2016. Prior to setting up the West Africa office, ARTICLE 19 supported the Gambia Press Union in their opposition to the Bill that was meant to establish the National Media Commission. This Commission was not independent, lacked representation, and imposed mandatory licensing conditions on individual journalists. Although the government gave in to the international pressure and withdrew the Bill, the situation led to one of the emblematic cases of murders of journalists in West Africa: the killing of Deyda Hydara in 2004. He was one of the key journalists advocating for the withdrawal of the Bill.

6. Over the years, many journalists left the Gambia because of the repression and the unfavorable environment for free freedom. Safety is not only the absence of direct menace, it is also an impression and the environment matters a lot. You can be safe but if you do not feel safe, if you are under pressure, the impression of lack of safety affects your work. By the time the regime fell, we knew about around 100 journalists who left due to persecution, fear for their lives and also due to family pressure.

7. In the case of the Gambia, many people were afraid to speak to regional institutions like the Human Rights Commission. We therefore took it on ourselves to place the Gambia on the Commission's agenda. Initially, the Commission took quite a lot of time to react to the situation in the Gambia. In the last years, and especially in 2016 when the intimidation was widespread, the Commission took a lot of steps to echo our criticism. We think that all of this work, and the voices of journalists especially those who left but could not be silenced, has contributed immensely to the voting out of dictator Yahya Jammeh. After he left the country, many journalists returned to the Gambia.

8. When conditions for press freedom improve, it can still be a long and difficult process to obtain justice for past crimes against journalists. There have been emblematic cases of impunity for

murders of journalists in West Africa. In Burkina Faso, the case of the murder of journalist Norbert Zongo has been dragging on and there is still no closure. The case shows that authorities are reluctant to pursue such cases and to prosecute the perpetrators. Yet, people want to know the truth, and families cannot move on unless they know who ordered the murder. People want to see justice but this has been difficult during reconciliation processes, like in the Gambia. We are afraid that in most of the cases, the government will prioritize reconciliation before justice. For example, the people who have confessed to murdering Deyda Hydar during the sessions of the Gambian Truth and Reconciliation Commission have been released.

9. The need for a strong legal framework for press freedom is also clear in the countries where press freedom was quite strong after the 1990s. Even the countries that experienced the opening up of the political and civic space after the 1990s, like Ghana, are now seeing a lot of restrictions, the shrinking of civic space and the rise of authoritarian regimes in the recent years. There are a few countries that are stable on press freedom, but the tendency is very negative. Ghana used to be one of the countries that was doing reasonably well and that enjoyed some press freedom. They have a media commission that is quite independent, and their judiciary is relatively independent. However, there are now some cases that have been unresolved, including the murder of investigative journalist Ahmed Hussein-Suale. No one has been held accountable. There have also been violent attacks against media workers by people close to the authorities. I think this has brought to light some of the vulnerabilities and the fragility of what has been achieved.

10. One of the most important things for the protection of journalists is therefore focusing on the legal framework in different countries. The law is often used to legitimise attacks against journalists. Psychological and physical violence is justified by using laws that are overly broad and not in accordance with international or regional standards. I believe that unless we focus on law reform, these attacks will continue to happen.

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

Date and Place: 31 October, Dakar

Name witness and signature: **Fatou Jagne Senghore**

ANNEXES:

Annex 1: Article, 'Ghana: Attacks on the Rise with impunity', ARTICLE 19 (August 2020), <https://www.article19.org/resources/ghana-attacks-on-journalists/>

Annex 2: Report, 'The Gambia: Analysis of Selected Laws on Media - Overview', ARTICLE 19 (2012), <https://www.refworld.org/docid/4fa77732.html>

Annex 3: Article, 'Burkina Faso: Une transition sapée, une semaine d'attaques contre les médias et les manifestants', ARTICLE 19 (September 2015), <https://www.article19.org/fr/resources/burkina-faso-a-week-of-attacks-for-media-and-demonstrators/>

Annex 4: Written comments submitted by ARTICLE 19 in the proceedings of Gambia Press Union and others v. National Media Commission and others in the Supreme Court of the Gambia (civil suit no. 5/2005), <https://www.article19.org/data/files/pdfs/cases/gambia-comments-on-media-commission-act.pdf>

Annex 5: Article, 'Mali: Bloody repression of protesters and attacks against the media', ARTICLE 19 (July 2020), <https://www.article19.org/resources/mali-bloody-repression-of-protesters-and-attacks-against-the-media/>

EXPERT WITNESS STATEMENT OF JOEL SIMON

Executive Director of the Committee to Protect Journalists

1. My name is Joel Simon. I am the executive director of the Committee to Protect Journalists (CPJ). In this testimony, I will set out CPJ's work and findings concerning impunity for the murder of journalists. Since its founding in 1981, CPJ has campaigned for justice when journalists are killed around the world. Some of these killings made international headlines, like the 1986 assassination of Colombian editor Guillermo Cano in Bogotá and the 1992 killing of ABC News correspondent David Kaplan by sniper fire in Sarajevo, Bosnia. While there was plenty of outrage in both cases, there were no systematic global efforts to demand justice.

The need for action: vanguard journalists

2. This is despite the fact that defending the rights of individual reporters remains a crucial part of the day-to-day work toward change. Many of the journalists killed in reprisal of their work are what I call the vanguard journalists. They are journalists whose investigative skills, specialized knowledge, visibility, or courage set them apart from the pack. Vanguard journalists break stories and publish explosive information others are afraid to touch. This relatively small group of reporters has an outsize influence, not just on the way people understand events in their own communities but also on global perceptions. Many of these journalists have been subjected to repression. Often, their murders were preceded by threats. In general, they have relied on international pressure to protect them from powerful and violent forces that have grasped a terrible reality. In most cases, if a vanguard journalist is eliminated, there is no one who can step forward to take their place; thus, death equals censorship.

3. Preserving the life of one such journalist or getting one such reporter out of jail helps ensure the flow of information at the global level. The imperative is all the more acute in an age of media capture. As the less-visible means of control grow, journalists who operate outside these systems must be championed and defended.

The impunity index

4. Since 1992, CPJ has published annual case lists and descriptions of journalists killed in the line of duty. In 2004, the organization began a major project to code all the data and enter it into a comprehensive database. As the impunity campaign focused on country-level actions, a significant question emerged: How could progress, both on a national and an international level, be measured? And could an objective barometer of impunity be used as a means of goading recalcitrant governments toward action?

5. After consulting a variety of experts, including statisticians, CPJ developed a formula. We looked at a ten-year period and included only those countries with at least five unsolved murders. We defined “unsolved” generously—these were killings in which there had not been a single conviction. Recognizing that the murder of a journalist would have a different impact in a country like Mozambique, which has a tiny press corps concentrated in the capital, than in Brazil or India, where the media is both enormous and diverse, we sought to find a way to weight our findings. Since it was impossible to determine the size of the press corps in any given country, we used population figures. We divided the number of unsolved murders by the size of the population to come to an objective figure based on careful research—a number that governments couldn’t challenge. We called it the Impunity Index.

Findings on impunity

6. It seems elemental that the right to freedom of opinion and expression cannot be exercised in practice when those who express critical views are systematically murdered with impunity. Yet we find that between 1992 and 2020, 895 journalists were murdered in direct reprisal for their work. Each of these killings was more than a murder; it was an effective form of censorship that deprived whole societies of essential information and protected powerful figures from the scrutiny that would make them accountable to the people.

7. CPJ’s research also shows that the majority of journalists killed in connection to their work around the world were specifically targeted for murder. A relatively small proportion were killed in crossfire. Those murdered had not covered frontline conflict but rather human rights, corruption, business, crime, and politics. And perhaps most disturbing, in more than 85 percent of those murders, the killers got away with the crime, a percentage that fluctuated over the next decade as new murders were perpetrated in far higher numbers than convictions took place. CPJ’s latest Impunity Index shows that over the last decade, 278 journalists were murdered and in 226 or 81 percent of those cases, there is impunity, a modest improvement from previous

years. Where there were convictions, they were usually of paid assassins, not of the masterminds.

8. In many cases, investigations fail because those who carry out the crimes are connected to officialdom and are able to exert influence over the political and judicial systems. Sometimes, the masterminds are part of those systems themselves. The killers of journalists often take advantage of conflict, instability, or institutional weaknesses to wage violence against those who expose or criticize their actions. From Mexico to Somalia, the pattern is the same: where journalist killings go unpunished, violence repeats, and a cycle of deadly censorship takes hold.

9. Reports on journalist killings compiled by other international groups suggest a similar breakdown. The data, in turn, compelled governments and international bodies like the United Nations to recognize the scope of the problem. The data has also revealed recurring patterns of violence when impunity is unaddressed. Killing with impunity is concentrated in a relatively small number of states. For example, in the decade from 2007 through 2016, 80 percent of all unsolved killings of journalists around the world took place in only twelve countries. Government and military officials are considered the leading suspects in more than a quarter of the cases in this same period. CPJ has found that in some countries organized crime syndicates and extremist groups have also played a prominent role in targeting journalists as they fight for power and information flows affect their ability to control territory, resources and income flows.

10. Based on this combination of information, CPJ and other groups argue that, regardless of who might be behind these crimes, the existence of impunity points to a systemic problem that states must address. Surprisingly, many countries with high rates of impunity were democracies whose leaders cared about their country's international reputation, an opening for effective advocacy.

Cycle of impunity: the case of Pakistan

11. In the past decade, some of these dynamics played out in Pakistan, a country that has seen an explosion of independent media as well an explosion in violence against the press. From 2010 to 2020, thirty-five journalists were killed, 18 of them murdered with impunity. One of the victims was Wali Khan Babar, a young television reporter, who was gunned down on the streets of Karachi in January 2011. Babar had been reporting on crime and corruption for the popular television news channel GEO TV news. His work put him at odds with the Muttahida Qaumi Movement (MQM), a political party that wielded immense power in Karachi at the time.

Investigations into the killing of journalists in Pakistan have rarely progressed past an initial phase. In Babar's case, at least five people connected to the investigation of the crime were murdered, including an eyewitness and two policemen.

12. Babar's case, however, proved to be an example not of how to subvert justice but of how to advance it despite seemingly insurmountable obstacles. National and international pressure mounted over Babar's case. His colleagues at GEO TV kept a steady media spotlight on the investigation and prosecution, while Pakistan's press freedom groups campaigned vigorously for justice. International freedom of expression groups echoed their message. In 2012, Pakistan was chosen as a focus country of the United Nations Plan of Action on the Safety of Journalists and the Issue of Impunity. In 2013, CPJ published a detailed report on impunity in Pakistan that highlighted the failure of the investigation in the Babar killing.

13. The immense pressure surrounding the case led the government to relocate the trial from Karachi to another district, where the MQM had less reach. Then, on March 1, 2014, six men were convicted. Four were given life sentences, and two suspects who were at large were sentenced to death in absentia. It was the first local journalist's murder in Pakistan to see justice. The convictions in the Babar killing suggest that the cycle of impunity can be disrupted, even in one of the most hostile of media environments. It starts with detecting and documenting the pattern of killing and speaking out.

Setting global standards: the need for state action

14. In this fight against impunity, it was not altogether surprising that the NGO community and media were committed, since journalists in all regions suffered from this common problem. But what moved the ball forward was the extent to which intergovernmental bodies took up the issue. A pivotal point in the adoption of impunity into the international agenda was the adoption of the UN Plan of Action for the Safety of Journalists and the Issue of Impunity in 2012, following an initiative by the United Nations Educational, Scientific and Cultural Organization (UNESCO).

15. In 2012, the UN Human Rights Committee, a body of legal experts, issued General Comment no. 34 on Article 19 of the International Covenant on Civil and Political Rights, identifying prosecution following attacks against journalists as a fundamental step to upholding the right to freedom of expression. All attacks against those who practice freedom of expression should be "vigorously investigated in a timely fashion, and the perpetrators prosecuted," the comment reads. Several other key instruments and actions at the UN level followed.

16. In less than a decade, what had started out as a series of disconnected, nationally focused efforts had become an international, UN-backed campaign. Most of the UN resolutions and proclamations make a case that press freedom is a keystone to other global objectives. A free press facilitates transparency and the free flow of information for development. The expression of diverse views bolsters peace building and the exposure of human rights violations, government corruption, and crime. The consensus that combating impunity is critical to promoting the essential work of journalists has situated the issue within broader global objectives. In fact, that very element is enshrined in the inclusion of press freedom in the Sustainable Development Goals, a comprehensive agenda adopted by over 190 countries to pursue a better future by 2030.

17. Creating change on a national level has been far more complex and fraught than winning international attention. Political will to aggressively tackle impunity is generally weak. Meanwhile, the Impunity Index has served as an effective naming and shaming tool. Some of the countries that appeared on the first edition of the index in 2008 remain mired in conflict, including Iraq and Somalia. At the same time, impunity in countries that are not at war and that moreover have robust democracies has remained deeply entrenched. Examples include Mexico, India, Brazil, and of course, the Philippines. For these governments, appearing in an index alongside conflict-ravaged states is an embarrassment. On more than one occasion, the index has elicited high-level public statements claiming that CPJ has distorted its findings. As in the Philippines, the transparent and clear methodology has allowed CPJ to push against such claims.

18. Since CPJ first began publishing the index, eleven repeat offender countries—meaning countries that CPJ identified as sustaining among the highest levels of impunity worldwide over time—prosecuted one or more suspects in at least one case, an indication that international pressure has brought some change. Year on year, changes in the index are not dramatic, but over time it conveys an important narrative. The countries that have deteriorated the most are Mexico and Somalia.

19. The most extreme positive shift is Colombia, which has gone from being among the worst countries in the world for impunity to falling off the index altogether. Colombia's "progress" is representative of the issue's many complexities. While the government did successfully convict the perpetrators in a small number of cases, its overall record of addressing impunity is poor. The

improvement in Colombia's standing on the index is derived from a decline in new journalist murder cases over the past ten years, attributable to the end of the decades-long conflict and the implementation of a national protection mechanism. Another, more worrying factor behind Colombia's data is self-censorship, which essentially means that because of violence, journalists are not pursuing dangerous but vital stories.

20. In some countries, governments have employed measures such as the establishment of special prosecutors, task forces, and commissions in response to pressure from media and freedom of expression groups. Where impunity is fed by corruption, collusion, or a lack of resources on the part of local and provincial authorities, bringing in teams from the capital can be effective. Brazil mobilized a federal task force whose work led to the conviction of a suspect in the murders of journalist Rodrigo Neto and photographer Walgney Assis de Carvalho. For the most part, the results of these considerable political efforts have been largely disappointing. FEADLE, as Mexico's special prosecutor's office is known, has a miserable record. Mexico remains one of the most dangerous places in the world to be a journalist, with fifty-six journalists murdered because of their work and an additional seventy-six killings in which the motive is so far unconfirmed by CPJ. Nearly all the murders were carried out with full or partial impunity.

21. There is a growing body of international documents, including a UN General Assembly consensual resolution, soft law, and court decisions. More importantly, state behavior is also showing signs of being influenced, with the establishment of mechanisms, legislation, and even a rise in convictions. Nonetheless, impunity is still an unknown or downplayed problem in too many quarters. On the ground, progress toward justice is slow and uneven.

22. There are a number of ways in which local and national authorities can ensure they deliver justice when journalists are murdered. First, they must have the necessary independence to conduct investigations, and adequate resources to do so. Political leaders should publicly support investigations and speak out about threats to press freedom. CPJ has observed that this kind of high-level political support can dramatically improve the atmosphere for an independent investigation.

23. Where appropriate, governments should recognize and expedite the transfer of cases to regional or national authorities which may have more resources and greater independence. Witness protection is important not only for the integrity of the process but also in sending the message that the case is being investigated and prosecuted aggressively.

24. In order to signal their commitment to fighting impunity, governments should consider creating independent panels to review unsolved cases, scrutinize investigations, and make recommendations. The makeup and conclusions of the panel should be transparent. Governments should provide detailed reports on the judicial status of all cases of killed journalists and steps taken to address impunity as requested by UNESCO's director-general for the bi-annual report on the Safety of Journalists and the Danger of Impunity.

25. On the global level, intergovernmental bodies and agencies - from the United Nations system to the multilateral banks - should recognize the fundamental role of press freedom in our world, including the vital role that journalists played during the COVID-19 pandemic. Reducing the rate of impunity is critical to safeguarding press freedom, but progress is only possible in states with a functioning judicial system. This is why mediators should insist that the safety of journalists be included in peace talks or in discussions with extremist groups in power, such as the Taliban in Afghanistan, where the prospect of justice for the 17 journalists killed in the last 10 years has moved further out of reach.

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

Date and Place: October 30, 2021
 New York City

Name witness and signature: **Joel Simon**

ANNEXES:

Annex 1: Committee to Protect Journalists, 2021Global Impunity Index,
<https://cpj.org/reports/2021/10/killers-of-journalists-still-get-away-with-murder/>

Annex 2: Simon, Joel. "Defending Vanguard Journalists." Media Capture: How Money, Digital Platforms, and Governments Control the News, edited by Anya Schiffrin. Columbia University Press, 2021.

Annex 3: Simon, Joel and Witchel, Elisabeth. "Globalizing the Battle Against Impunity." *Regardless of Frontiers: Global Freedom of Expression in a Troubled ,* edited by Lee C. Bollinger and Agnes Callamard. Columbia University Press, 2021

Annex 4: Rubin, Elizabeth. *Roots of Impunity*, Committee to Protect Journalists, 2013.
<https://cpj.org/reports/2013/05/pakistan-roots-impunity/>

Annex 5: *No Excuse: Mexico Must Break Cycle of Impunity in Journalists' Murders*. Committee to Protect Journalists, 2017.
<https://cpj.org/reports/2017/05/no-excuse-mexico-impunity-journalist-murder/>

Annex 6: *The Road to Justice*. Committee to Protect Journalists, 2014.
<https://cpj.org/reports/2014/10/the-road-to-justice-killing-journalists-impunity/>

Annex 7: *Halftime for the Brazilian Press*. Committee to Protect Journalists, 2014.
<https://cpj.org/reports/2014/05/halftime-for-brazilian-press-censorship-violence/>

Annex 8: *Anatomy of Injustice: The Unsolved Killings of Journalists in Russia*. Committee to Protect Journalists, 2015.
<https://cpj.org/reports/2009/09/anatomy-injustice-russian-journalist-killings/>

AMICUS BRIEFS

AMICUS BRIEF *submitted by the International Association of Prosecutors*

Submission of the International Association of Prosecutors
before the People's Tribunal on the Murder of Journalists
as a third-party

26 October 2021

People's Tribunal on the Murder of Journalists
Weesperstraat 3
1018 DN Amsterdam

Re: Opening hearing People's Tribunal on the Murder of Journalists

Introduction

1. Since its establishment in June 1995, the **International Association of Prosecutors (IAP)** has strived to improve and strengthen international cooperation between prosecutors by supporting the pace and efficiency in which essential information and data are exchanged. The IAP has demonstrated a strong commitment to setting and raising the standards of professional conduct and ethics for prosecutors worldwide and promoting the rule of law, fairness, impartiality, and respect for human rights. Today, the IAP brings networking, support and education to more than 350,000 prosecutors in 177 countries and territories around the world.
2. To safeguard the role of the prosecutor and his/her role as a legal officer, the IAP actively advocates for the functional independence of prosecutors. Through its worldwide program for Prosecutors in Difficulty, the IAP monitors threats to the safety and security of prosecutors and develops practical strategies to respond to such threats. Through this important work on behalf of prosecutors, the IAP fully recognizes the risks of talking truth to power, particularly in the context of cases of corruption and public wrongdoing.

3. Building on the 1990 UN Guidelines on the Role of Prosecutors, the **IAP Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors (“the Standards”)** adopted by the IAP in 1999, serve as the world’s leading statement on the professional standards of prosecutors and prosecution authorities.
4. The IAP grows and maintains a worldwide community for prosecutors, to share experience and challenges in a trusting and secure professional environment. Through the annual conference, regional meetings, training, and workshops, the IAP routinely brings together frontline prosecutors, associations of prosecutors and heads of prosecution services.

Discussion

5. Since 2006, over 1,200 journalists have been killed around the world, with an impunity rate of 87% according to UNESCO’s data. In addition, journalists are subjected to countless other threats, ranging from kidnapping, torture and other physical attacks to harassment, particularly in the digital sphere. Threats of violence and attacks against journalists contribute to a climate of fear for media professionals, impeding the free circulation of information, opinions and ideas for all citizens.
6. In response to this alarming trend, it is essential to raise the knowledge and capacities of judicial actors, and particularly prosecutors, on the need to investigate and prosecute crimes and attacks against journalists. Indeed, as those responsible for initiating prosecutions and often supervising criminal investigations, public prosecutors have a crucial role to play in protecting journalists who are often threatened or attacked for their work, particularly when they investigate on corruption issues and public wrongdoings.
7. In this context, the IAP signed an agreement with UNESCO in 2020, to cooperate on addressing the issue of impunity for crimes against journalists. Since then, the IAP and UNESCO have jointly developed **Guidelines for Prosecutors on Cases of Crimes against Journalists**, which identify key elements to consider in the decision-making process when an alleged crime is committed against a journalist and propose a series of elements to consider when proceeding with the investigation and prosecution of such cases as well as emphasizing the importance of protection of journalistic sources.

8. Available in 16 different languages (with further translations planned), these Guidelines will serve as the foundation of an online global training course developed by the IAP and UNESCO to build the knowledge and capacities of prosecutors on investigating and prosecuting crimes against journalists, thereby strengthening the respect for the rule of law and freedom of expression globally. The course will be launched in 2022. In addition, a thematic Special Interest Group session on “Investigating and prosecuting crimes and attacks against journalists and fostering the safety of journalists” will be held at the IAP’s 27th Annual Conference in Tbilisi, Georgia in September 2022.

Conclusions

9. An integral part of the international community’s efforts to end the impunity of those who attack journalists is bringing the perpetrators to justice and holding them accountable for their actions in accordance with the rule of law and human rights. As those responsible for initiating prosecutions and, in some cases, supervising criminal investigations, independent public prosecutors have a crucial role to play in protecting journalists and in ensuring that crimes and attacks against them do not go unpunished.
10. When conducting, supervising or providing advisory assistance to an investigation in relation to an alleged crime committed against a journalist, prosecutors should initiate or recommend a contextual analysis of the nexus between the alleged crime and the media activities, past and present, of the victim.
11. All crimes against journalists should be prosecuted when both the sufficiency of the evidence and public interest standards are met. Prosecutors should bear in mind the possibility of enhanced or escalating offences. The public interest may render inappropriate the implementation of non-prosecution resolutions such as nonjudicial treatment or civil diversion measures.
12. Journalistic sources are confidential and should be treated as such at every stage of the investigation and judicial proceedings. Prosecutors must ensure the protection of confidential data that may lead to the identification of a source in situations where journalistic sources could be revealed by means of investigation or during the proceedings.

13. Crimes against journalists often have a transnational dimension requiring the sharing of information between states, facilitated by international judicial co-operation. Prosecutors should take practical steps to make international co-operation through multi-lateral and bi-lateral agreements and other arrangements effective.

14. Raising awareness through prosecutorial training will build capacity and facilitate an important step towards fighting against impunity. Prosecution services should develop or offer curricula which include material relevant to the safety of journalists, protection of journalistic sources and fundamental rights.

Annexes to be submitted as additional evidence to the judges of the People's Tribunal:

1. **IAP/UNESCO Guidelines for Prosecutors on Cases of Crimes against Journalists**

**Gary Balch
General Counsel
International Association of Prosecutors
26 October 2021**

AMICUS BRIEF *submitted by International Media Support*

AMICUS BRIEF - PEOPLE'S TRIBUNAL ON THE MURDER OF JOURNALISTS

Submission of International Media Support
before the People's Tribunal on the Murder of Journalists
as a third-party

2 November 2021

People's Tribunal on the Murder of Journalists
Weesperstraat 3
1018 DN Amsterdam

Re: Opening hearing People's Tribunal on the Murder of Journalists

Introduction

1. This is a third-party submission by International Media Support (IMS), pursuant to Section 1, paragraph 16 of the indictment that has been formulated and presented to the Permanent People's Tribunal on the Murder of Journalists [*hereinafter* the Tribunal].
2. IMS is a global non-profit organisation working to promote public interest journalism, strengthen democracy, ensure development and reduce conflict. Our submission draws on our multi-year experience of media development assistance in over 30 countries across the four continents, and particularly on our work with more than 100 media partners across the globe to support the safety of journalists.
3. IMS holds that no single tool improves the increasingly hostile conditions in which many journalists and media workers operate. Rather, a multi-pronged and inter-connected approach is required that works to prevent the commission of crimes against journalists, protect journalists in the case crimes are committed and readily prosecute the

perpetrators of crimes against journalists to hold them to account, in accordance with the UN Plan of Action on the Safety of Journalists and the Issue of Impunity.³⁶

4. Following the indictment of the Independent Republic of Sri Lanka, the Syrian Arab Republic and the State of Mexico brought before the Tribunal for alleged human rights violations in the respective cases of murdered journalists, this submission will highlight a range of conditions that can lead to a path of impunity for these crimes. This communication aims to provide the Tribunal with several circumstances that have allowed for the murders of journalists in reprisal for their work to continue unabated and without answer.
5. Having regard for the unwillingness or inability of government authorities to guarantee journalists' safety, we respectfully urge the Tribunal to take these conditions relating to the investigation and prosecution of crimes into close account when assessing the allegations outlined against the respective States for the murders of journalists Lasantha Wickrematunge, Nabil Walid Al-Sharbaji and Miguel Ángel López Velasco.
6. The following lays forth an overview of structural weaknesses within investigatory and prosecutorial frameworks that can, in whole or in part, obstruct justice regardless of the political will of a State. IMS submits that there is a greater likelihood for impunity when combinations of these conditions are present at the time of, or shortly thereafter, the murder of a journalist:

Circumstances relating to the investigation and prosecution of murders of journalists that can provide for impunity

7. **Disregard for threats, harassment or intimidation made on a journalist's life prior to their murder.** Threats to the livelihood of a journalist are a precursor to lethal violence. As revealed in a recent study, of 139 media professionals who were murdered in Latin America between 2001 and 2020, half of them had received threats related to their

³⁶ See generally, United Nations Educational, Scientific and Cultural Organization. (2012). *UN Plan of Action on the Safety of Journalists and the Issue of Impunity*. CI-12/CONF.202/6. https://en.unesco.org/sites/default/files/un-plan-on-safety-journalists_en.pdf.

work.³⁷ Notably, whether threats predominantly occur offline or online, journalists may still stand in great danger. The murders of Maltese investigative journalist Daphne Caruana Galizia³⁸ and prominent Indian journalist Gauri Lankesh³⁹ in 2017, both of whom had been the targets of prolific, gendered online attacks before they were killed, stand as grave warnings of how online abuse can translate into fatal, offline violence. In contexts where threats against journalists are not taken seriously by authorities or relatedly when authorities fail to investigate the link between threats of violence and a journalist's work, chances of impunity increase.

8. **Weak system of checks and balances within branches of government.** After the assassination of Maltese investigative journalist Daphne Caruana Galizia, cited above, the Parliamentary Assembly of the Council of Europe issued a resolution demanding its member state Malta set up an independent public inquiry. The resolution cited "extreme weakness of its [Malta's] system of checks and balances" and called an in-depth investigation into those who could be "involved in or benefiting from the scandals exposed by Daphne Caruana Galizia and her colleagues".⁴⁰ Concerns of impartiality have been raised by her family and freedom of expression advocates, who have gone through great lengths to uncover the path to impunity that was laid up through the highest ranks of government in Malta.⁴¹ Furthermore, legal obstacles to investigation and punishment, such as amnesties and statutes of limitations are an indication similarly beget impunity.
9. **Lack of coordination between federal and local authorities during investigations.** In contexts where law enforcement officials are unwilling to work together, there is greater probability for gaps to form in a chain of investigation, especially in complex cases that

³⁷ Reporters Without Borders. (2021, 13 May). 2011-2020: A study of journalist murders in Latin America confirms the importance of strengthening protection policies.

<https://rsf.org/en/reports/2011-2020-study-journalist-murders-latin-america-confirms-importance-strengthening-protection>

³⁸ Garside, J. (2018, April 17). *Daphne Caruana Galizia: 'Malta has made me a scapegoat'*.

<https://www.theguardian.com/world/2018/apr/17/daphne-caruana-galizia-malta-has-made-me-a-scapegoat>.

³⁹ Romig, R. (2019, March 14). *Railing Against India's Right-Wing Nationalism Was a Calling. It Was Also a Death Sentence*. <https://www.nytimes.com/2019/03/14/magazine/gauri-lankesh-murder-journalist.html>

⁴⁰ Witchel, E. (2020). *Shared Responsibility: Safeguarding press freedom in perilous times*. International Media Support, p. 67.

<https://www.mediasupport.org/publication/shared-responsibility-safeguarding-press-freedom-in-perilous-times/>.

See also: Parliamentary Assembly of the Council of Europe (2019b). Resolution 2293 on Daphne Caruana Galizia's assassination and the rule of law in Malta and beyond: ensuring that the whole truth emerges.

<https://pace.coe.int/en/files/28053>.

⁴¹ Garside, *supra* note, 3.

require careful consideration of a victim's profession as motive for the crime. This unwillingness to cooperate can result in excessive spans of time between an attack on a journalist and the presence of first responders at the scene; crucial evidence in complex cases can be easily lost either intentionally or unintentionally. On the other hand, if there is coordination between both levels of authorities, this lends to a greater probability that the intellectual and material authors of the crime will both be held to account, in line with the "federalisation" model, as coined by former Special Rapporteur for Freedom of Expression of the Inter-American Commission of Human Rights Eduardo Bertoni.⁴²

10. **Insufficient staffing and/or training of police units and prosecutors' offices.** If the uniqueness and importance of the right to free press as a bedrock of democracy is not recognised or understood by those in roles entrusted to protect this fundamental freedom, it is less likely that crimes against journalists will be thoroughly investigated. The provision of guidelines and training to ensure police and prosecutors appreciate the special position occupied by journalists and the unique and often gendered threats they face is key to holding perpetrators of crimes against journalists to account.⁴³ Lack of a special prosecutor's office assigned to crimes committed against freedom of express is also an indicator that perpetrators of crimes against journalists are more likely to not be held accountable, but it is not indicative. For instance, Mexico has taken special measures to combat impunity with its Special Prosecutor for Attention to Crimes Committed Against Freedom of Expression (FEADLE by its Spanish acronym), however its conviction rate has been minimal.⁴⁴ Notably, insufficient staffing and/or training is often due to underfunding, which similarly begets impunity.

11. Deficient witness protection programmes. In the Philippines, witnesses of murders of journalists have been murdered themselves or have died under questionable

⁴² Bertoni, E. (2015, September). *Prevent and Punish: In search of solutions to fight violence against journalists*. United Nations Educational, Scientific and Cultural Organization. https://en.unesco.org/sites/default/files/prevent-and-punish_bertoni_0.pdf. The "federalisation" approach allows federal or central government investigative bodies to step in following attacks on freedom of expression where local state authorities are viewed as weak or compromised.

⁴³ IMS. (2020). *Prospect for change in The Gambia: Collaborative support to combat impunity*, p. 40. <https://www.mediasupport.org/publication/prospect-for-change-in-the-gambia-collaborative-support-to-combat-impunity/>. See also: Deyda Hydara Jr. v The Gambia ECW/CCJ/APP/30/11, 10 June 2014; Amnesty International and Others v Sudan (1999) at para. 56; Mouvement Burkinabé des Droits de l'Homme et des Peuples v Burkina Faso (2001) at para. 42.

⁴⁴ Witchel, *supra* note, 5, pp. 63-64.

circumstances, which is a grave indicator of impunity.⁴⁵ If judicial officers, investigators, witnesses and victims' next-of-kin are not free from harassment and threats, suspicion of foul play should heighten.

12. Absence of transparency during proceedings. Closed-door hearings or court proceedings should also generally heighten suspicion. From one emblematic case like the murder of Washington Post columnist Jamal Khashoggi who was dismembered inside the Saudi embassy in Istanbul by state operatives in 2018 to another emblematic case, like that of Syrian victim in question Nabil Walid Al-Sharbaji, whose family was not allowed to attend his hearing and nor was any public information about the hearing has been made available before he died in custody—the provision of information from that State is integral.

CONCLUSION

13. This submission has provided an unexhaustive overview of conditions where IMS has witnessed absolute or partial impunity for crimes against journalists upon the indictment of the Independent Republic of Sri Lanka, the Syrian Arab Republic and the State of Mexico for alleged human rights violations to be heard by the Permanent People's Tribunal on the Murder of Journalists.
14. IMS submits that the Tribunal has been presented with an important opportunity to make public record that impunity for murdered journalists is a crime that impacts society as a whole and societal patterns trends can be identified to confirm the systemic nature of this crime on a global scale.
15. This amicus brief is respectfully submitted to the Tribunal on behalf of International Media Support.

Annexes submitted as additional evidence to the judges of the People's Tribunal published by International Media Support:

⁴⁵ Witchel, E. (2014). *When journalists are killed, witnesses may be next*. Committee to Protect Journalists. <https://cpj.org/2014/02/attacks-on-the-press-impunity-witnesses/>

- [Shared responsibility: Safeguarding press freedom in perilous times](#) (2020) [hard copy already submitted];
- [Prospect for change in The Gambia: Collaborative support to combat impunity](#) (2020);
- [The safety of women journalists: Breaking the cycle of silence and violence](#) (2019);
- [Defending Journalism](#) (2017) [hard copy already submitted]

Yours sincerely,

Colette Heefner, Esq.
Global Safety Advisor
International Media Support

REPORTS AND PUBLICATIONS

Academic publications

Asal et al. *Killing the Messenger: Regime Type as a Determinant of Journalist Killing, 1992-2008*. 2018. *Foreign Policy Analysis* 14, pp. 24-43

Bartman, *The Repression of Boundary-Blurring Actors in Subnational Undemocratic Regimes: Empirical Explorations in Veracruz and Gujarat* 2020,

<https://hdl.handle.net/11245.1/9e36b8e8-2ba4-4754-a7e8-f86d191c959f>

Draghici and Woods. *Killing journalists is not media regulation: Private rights, collective wrongs and the impact of impunity*. 2019. *Transnational Law and Contemporary Problems* 28(2), pp. 263-308

Gohdes and Carey. *Canaries in a coal-mine? What the killings of journalists tell us about future repression*. 2017. *Journal of Peace Research* 54(2), pp. 157-174

Harrison and Pukallus. *The politics of impunity: A study of journalists' experiential accounts of impunity in Bulgaria, Democratic Republic of Congo, India, Mexico and Pakistan*. 2018. *Journalism* 00(0), pp. 1-17

Hughes and Vorobyeva. *Explaining the killing of journalists in the contemporary era: The importance of hybrid regimes and subnational variations* 2019. *Journalism*, pp. 1-19

Investigative reports concerning cases involving the murder of a journalist

A Safer World for the Truth. *The murder of Regina Martínez Pérez: An opportunity for justice*. 2021. <https://www.saferworldforhetruth.com/investigations/regina-martinez>

A Safer World for the Truth. *Breaking the Silence: An Investigation into the Murder of Zubair Mujahid*. 2021. <https://www.saferworldforhetruth.com/investigations/zubair-mujahid>

RSF. *The Gambia, Deyda Hydara: the murder of a journalist under surveillance*. 2005. <https://rsf.org/en/reports/deyda-hydara-murder-journalist-under-surveillance>

UN Special Rapporteur on extrajudicial, summary or arbitrary executions. *Inquiry into the killing of Mr. Jamal Kashoggi*. A/HRC/41/CRP.1. 2019.

<https://www.ohchr.org/EN/Issues/Executions/Pages/Inquiry.aspx>

Reports concerning impunity for crimes against journalists

Committee to Protect Journalists. *2021 Global Impunity Index*. 2021.

<https://cpj.org/reports/2021/10/killers-of-journalists-still-get-away-with-murder/>

Committee to Protect Journalists (Elizabeth Rubin). *Roots of Impunity*. 2013.

<https://cpj.org/reports/2013/05/pakistan-roots-impunity/>

Committee to Protect Journalists. *The Road to Justice*. 2014.

<https://cpj.org/reports/2014/10/the-road-to-justice-killing-journalists-impunity/>

High Level Panel of Legal Experts on Media Freedom. *Advice on Promoting More Effective Investigations into Abuses Against Journalists*. 2020.

<https://www.ibanet.org/MediaHandler?id=5A00CE8E-0D66-41E2-A04A-FFCC36F8C67D>

IAP/UNESCO. *Guidelines for Prosecutors on Cases of Crimes against Journalists*. 2021.

<https://unesdoc.unesco.org/ark:/48223/pf0000375138>

IFJ. *White Paper on Global Journalism*. 2020.

<https://www.ifj.org/media-centre/reports/detail/ifj-white-paper-on-global-journalism/category/publications.html>

IMS. *Defending Journalism*. 2017.

<https://www.mediasupport.org/publication/defending-journalism/>

IMS. *Shared responsibility: Safeguarding press freedom in perilous times*. 2020.

<https://www.mediasupport.org/publication/shared-responsibility-safeguarding-press-freedom-in-perilous-times/>

IMS. *The safety of women journalists: Breaking the cycle of silence and violence*. 2019.

<https://www.mediasupport.org/publication/the-safety-of-women-journalists/>

Reporters without Borders. *2021 World Press Freedom Index*. 2021.
<https://rsf.org/en/world-press-freedom-index>

UN Publications⁴⁶

UN Special Rapporteur on violence against women, its causes and consequences. *Combating violence against women journalists*. A/HRC/44/52. 2020.
<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G20/109/79/PDF/G2010979.pdf?OpenElement>

UN Special Rapporteur on extrajudicial, summary or arbitrary executions. *Investigation of, accountability for and prevention of intentional State killings of human rights defenders, journalists and prominent dissidents*. A/HRC/41/36. 2019.
https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/41/36

UN High Commissioner for Human Rights. *Safety of journalists*. A/HRC/39/23. 2018.
https://www.ohchr.org/Documents/Issues/Journalists/A_HRC_39_23_EN.docx

UNESCO. *Strengthening the Implementation of the UN Plan of Action on the Safety of Journalists and the Issue of Impunity*. 2017.
https://en.unesco.org/sites/default/files/options_geneva_consultation.pdf

UNESCO. *Intensified attacks, new defences: developments in the fight to protect journalists and end impunity*. 2019. <https://unesdoc.unesco.org/ark:/48223/pf0000371487>

UN Secretary-General. *The safety of journalists and the issue of impunity : report of the Secretary-General*. 2019. <https://digitallibrary.un.org/record/3826999?ln=en>

⁴⁶ A full overview of legal sources from the international and regional human rights framework can be found in the attached legal framework.

Country- or region-specific reports on impunity for crimes against journalists

Non-exhaustive overview of country reports on impunity for crimes against journalists. Countries not covered below are included on CPJ's Impunity Index and RSF's World Press Freedom Index.

Afghanistan

IFJ. *State of Impunity for Crimes Against Journalists in Afghanistan*. October 2021.

<https://www.ifj.org/media-centre/news/detail/category/end-impunity-2021/article/impunity-afghanistan.html>

Bangladesh

ARTICLE 19. *Bangladesh: Ending impunity and protecting journalists from attacks*. 2017.

<https://www.article19.org/resources/bangladesh-ending-impunity-and-protecting-journalists-from-attacks/>

Belarus

OHCHR. *Belarus must end pattern of police brutality and impunity: UN experts*. 2021.

<https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=26970&LangID=E>

Brazil

ARTICLE 19. *The Cycle of Silence: Impunity in murders of communicators in Brazil*. 2018.

https://www.article19.org/data/files/medialibrary/38542/impunidade_ENG_R04.pdf

Burkina Faso

ARTICLE 19. *Burkina Faso: Une transition sapée, une semaine d'attaques contre les médias et les manifestants*. 2015.

<https://www.article19.org/fr/resources/burkina-faso-a-week-of-attacks-for-media-and-demonstrators/>

Colombia

FLIP. *La lucha contra la impunidad en los crímenes contra la prensa desde la sociedad civil*. 2019.

<https://flip.org.co/index.php/en/publicaciones/informes/item/2431-la-lucha-contra-la-impunidad-en-los-crimenes-contra-la-prensa-desde-la-sociedad-civil>

Democratic Republic of Congo

IPS. *Alarming Crisis of Impunity for Crimes Against Journalists in DRC*. 2021.

<https://reliefweb.int/report/democratic-republic-congo/alarming-crisis-impunity-crimes-against-journalists-drc>

European Union

European Parliament. *Safety of journalists and the fighting of corruption in the EU*. 2020.

[https://www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL_STU\(2020\)655187](https://www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL_STU(2020)655187)

The Gambia

IMS. *Prospect for change in The Gambia: Collaborative support to combat impunity*. 2020.

<https://www.mediasupport.org/publication/prospect-for-change-in-the-gambia-collaborative-support-to-combat-impunity/>

Ghana

ARTICLE 19. *Ghana: Attacks on the Rise with impunity*. August 2020.

<https://www.article19.org/resources/ghana-attacks-on-journalists/>

Honduras

PEN International. *Journalism in the Shadow of Impunity*. 2014.

<https://pen-international.org/app/uploads/Honduras-Journalism-in-the-Shadow-of-Impunity1.pdf>

Latin-America

Reporters without Borders. *2011-2020: A study of journalist murders in Latin America confirms the importance of strengthening protection policies*. 2021.

<https://rsf.org/en/reports/2011-2020-study-journalist-murders-latin-america-confirms-importance-strengthening-protection>

Libya

Human Rights Watch. *War on the Media: Journalists under Attack in Libya*. 2015.

https://www.hrw.org/sites/default/files/reports/libya0215_ForUpload.pdf

Maldives

IFJ. *CHASING JUSTICE - Maldives: Study on Impunity for Crimes against Journalists*. 2021.

<https://www.ifj.org/media-centre/news/detail/category/press-releases/article/maldives-mja-lau-nces-report-on-impunity-for-crimes-against-journalists.html>

Mali

ARTICLE 19. *Mali: Bloody repression of protesters and attacks against the media*. 2020.

<https://www.article19.org/resources/mali-bloody-repression-of-protesters-and-attacks-against-the-media/>

MENA

Gulf Centre for Human Rights. *No to Impunity*. 2021. <https://www.gc4hr.org/report/view/150>

Mexico

Committee to Protect Journalists. *No Excuse: Mexico Must Break Cycle of Impunity in Journalists' Murders*. 2017. <https://cpj.org/reports/2017/05/no-excuse-mexico-impunity-journalist-murder/>

Inter-American Commission on Human Rights. *Special Report on the Situation of Freedom of Expression in Mexico*. 2018.

https://www.oas.org/en/iachr/expression/docs/2018_06_18_CIDH-UN_FINAL_MX_report_ENG.pdf

Reporters without Borders. *Veracruz: Journalists and the State of Fear*. 2017.

<https://www.refworld.org/docid/589343e04.html>

Northern-Ireland

Reporters without Borders. *DISPATCH: One year after the killing of Lyra McKee, press freedom remains under threat in Northern Ireland*. 2020.

<https://rsf.org/en/reports/dispatch-one-year-after-killing-lyra-mckee-press-freedom-remains-under-threat-northern-ireland>

Pakistan

Freedom Network. *100% Impunity For Killers, 0% Justice For Pakistan's 33 Murdered Journalists In 2013-19*. 2019.

<https://fnpk.org/wp-content/uploads/2019/11/PDF-Impunity-Report-2019-Final.pdf>

Russia

Committee to Protect Journalists. *Anatomy of Injustice: The Unsolved Killings of Journalists in Russia*. 2015. <https://cpj.org/reports/2009/09/anatomy-injustice-russian-journalist-killings/>

Somalia

Reporters Without Borders. *IMPUNITY: War on Somalia's Journalists*. 2012.

<https://rsf.org/en/news/impunity-war-somalias-journalists-nusoj-report>

Western Balkans

Human Rights Watch. *Media Freedom Under Attack in the Western Balkans*. 2015.

<https://www.hrw.org/report/2015/07/15/difficult-profession/media-freedom-under-attack-western-balkans>