

OPENING HEARING 2 NOVEMBER 2021

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

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, 35 have already been killed.

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.

The People's Tribunal
on the Murder of Journalists.

A Safer World For The Truth

According to the RSF World press freedom index, in 2020 the total number of abuses (counting murders and attacks of all kinds) against journalists around the world grew by 17% compared to the previous year. In Africa, abuses grew by 13%. 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.

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

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

As the Prosecutor's indictment recalls, the vast majority of the crimes committed against journalists are unpunished. Various figures exist, the CPJ counts a 86% impunity rate, the UNESCO in 2012 counted a 90% 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.

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

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.

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.

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.

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

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”*.

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

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

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.

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

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.

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

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 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.**

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.

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.

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.

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.

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..

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 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

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**

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.

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**

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.

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.

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.

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 Navan 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.

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 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.

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.

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.

This statement was given in english on 29 October 2021, and will be delivered in English on 2 November 2021 during the opening hearing of the People's Tribunal on the Murder of Journalists.

Paris, 29 October 2021



Christophe Deloire
Secretary General of Reporters Without Borders (RSF)