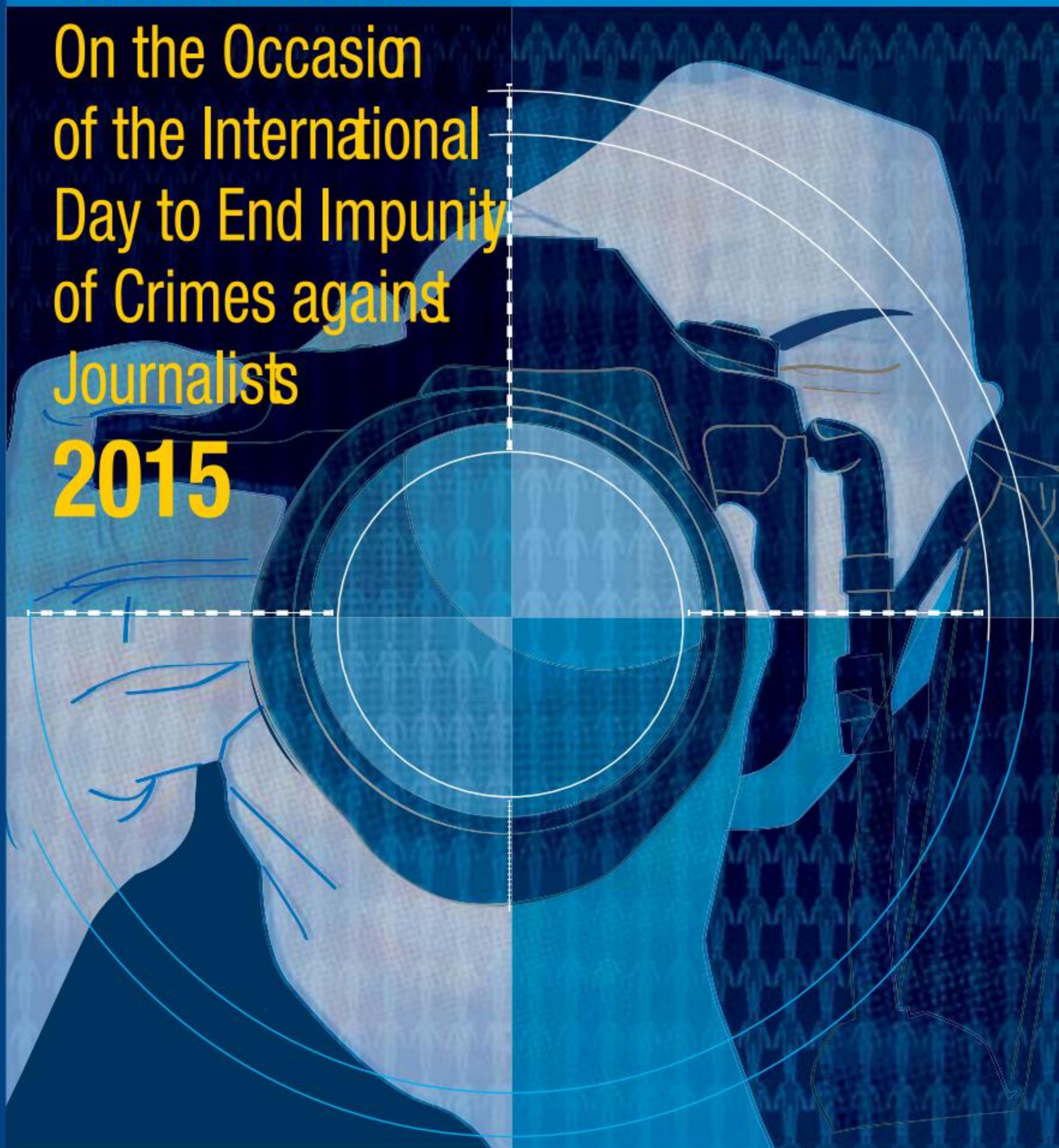




United Nations
Educational, Scientific and
Cultural Organization

Commemoration conference

On the Occasion
of the International
Day to End Impunity
of Crimes against
Journalists
2015



**Ending Impunity for Crimes against
Journalists**

Ebook Conferences
Editor: Ignacio Vidal

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I. Preface

Never in history have societies had access to so much information. Technological advances in communications have made possible that any event can be followed by millions of people in real time.

The coverage of 13 November 2015 Paris attacks constitute an example of how people can unite in the fight against violence and terror through conventional and nonconventional means of communication. Therefore, the fact that human beings at this time are highly connected and demand honest and truthful information cannot be denied. People need information to be delivered with transparency to exercise their democratic duties. This fourth power, when properly used, turns the members of any society into observers and referees. Millions of people in the world are now able to track all the injustices and abuses committed against human rights.

Aware of the influence freedom of expression has on fighting injustices, many individuals, criminal groups and even governments try to cut short this right in very different ways, being violence the most extreme form of censorship.

Over the last decade the number of people who devote its professional life to the practice of journalism has increased significantly.

This has redefined the concept of journalist, now encompassing those who do not hold a degree or work for a conventional media outlet. Even though there is no consensus on what are the requisites to be a journalist, the UNESCO's intergovernmental council for the International Programme for the Development of Communication has agreed at its 28th session in March 2012, that the term covers not only journalists narrowly conceived, but also media workers and social media producers who generate a significant amount of public interest journalism.

By virtue of this statement, citizens, journalists, artists, activists, are all considered communications experts. The distinction does not lie in the background of each person, it lies on what each person does. Therefore, it is necessary to recognize and protect anyone who decides to exercise the right to freedom of expression in favor of the defense of justice and human rights. Nowadays many people in world are threatened or have been killed merely for exercising the right to freedom of expression. Over the last decades the number of killed journalists, according to the CPJ, has steadily increased without the perpetrators being punished for their acts. Such impunity not only increases violence, but also creates a climate of self-censorship.

The UNESCO Director-General's 2014 Report records 593 killings of journalists between 1 January 2006 and 31 December 2013. From the limited information received from UNESCO Member States about these killings,

Journalist Killed Between 1992-2015



only 39 out of the 593 cases were advised as being resolved, representing less than 7 percent of total cases. In light of the above, it is obvious that journalists across the globe are facing a safety problem. Besides, the fundamental right to freedom of expression is also widely disregarded in many places across the world.

Given that this is a basic pillar for the creation of free and fair societies, the UN and UNESCO have deemed it necessary to develop a series of measures aimed at solving the issue of attacks on freedom of expression and safeguarding the physical integrity of media professionals. These measures are included in the United Nations Plan of Action on the Safety of Journalists and the Issue of Impunity and the adoption of the Resolution A/RES/68/163 by the General Assembly which proclaimed 2 November as the 'International Day to End Impunity for Crimes against Journalists' (IDEI).

The Plan of Action aims to creating a free and safe environment for journalists and media workers, both in conflict and non-conflict situations, with a view to strengthening peace, democracy and development worldwide. Its measures include, among other undertakings, the establishment of a coordinated inter-agency mechanism to handle issues related to the safety of journalists as well as assisting countries to develop legislation and mechanisms favorable to freedom of expression and information, and supporting their efforts to implement existing international rules and principles. The IDEI is not only commemorated for the sake of it, the IDEI is also commemorated because it represents an opportunity to proactively address the issue of violence against journalists and the ways to solve it through the creation of discussion forums. These forums count on the participation of relevant agents in the field of International Justice, organizations for the defense of freedom of expression and also media professionals.

In the commemoration conference on the occasion of the 2015 IDEI held in Costa Rica the contribution of civil societies and national and international organizations in the fight against impunity for crimes against journalists was largely discussed. Even though impunity is biggest threat to freedom of expression, there are many others that have to be considered too. Broadcasting licensing restrictions, the use of the penal code in cases of defamation, the pretext of national security or not taking action against violence against journalists are some of the forms used to restrain the right to freedom of expression.

Consequently, it is fair to say that no society today is exempt of complying with its obligations towards the recognition and protection of the right to freely and fully express ideas, thoughts and opinions. However, as shown by the panelists, the perpetrators of these crimes are not always single individuals. Authoritarian regimes or alleged democracies often perpetrate these attacks.

In case a state is truly determined to protect freedom of expression several are the options it has at its disposal to do so. As a prerequisite, the definition of journalist should also cover individuals that do not hold a degree or work for a conventional media outlet. Nowadays there are bloggers, activists, NGO members and laymen and laywomen who require recognition and protection due to the work towards the defense of human rights. One of the options is to adapt national legislation to the new communicative realities that technological advancements and social transformations bring. This can only be achieved if justice operators receive proper training. On the other hand, states have to create protection mechanisms and monitoring bodies that keep a track of the cases of violence against journalists and prevent them.

Likewise, it would be convenient to create special investigative units and special prosecution offices for the investigation of crimes against freedom of expression. The know-how and study of patterns these units can produce would be very helpful in the fight against impunity.

In cases of state-directed violations solutions are far more complex, although that does not mean that solutions cannot be achieved under these circumstances. As the journalist and human right activist Sonali Samerasinghe showed, it is hard yet possible to fight criminal governments. Surrendering is not an option when embarking on a task of this nature. In addition, people have to be aware of the importance of having the right to freedom of expression. Journalists do not exercise this right just for themselves, it is a collective right because it has the power to protect the community from injustices. It allows individuals to create bonds and to react against threats.

International organizations like UNESCO, UN or the different continental courts of justice are also key agents which have the power to pressures states to comply with the obligations derived from the ratification of international treaties. States should not invoke their national sovereignty to deny the people their fundamental rights. The task of guaranteeing that the right to freedom of expression is respected and protected requires the collaboration of all the members of the society. Citizens, as well justice operators and international organizations, must always remain vigilant.

The issue of impunity for crimes against journalists has deep political, social and economic implications that difficult the achievement of effective solutions. This does not mean that any advancement in the defense of fundamental rights should not be made, especially when the full exercise of freedom of expression contributes to safeguarding the other rights. To acknowledge the existence of a global problem is the first step to solve the problem. Individuals and governments have to comply with their duties, it is the only way to make gradual but steady progress in that regard.

Democracies are necessary to live in peace, but proper democracies are built on the right of the people to express their ideas, thoughts and opinions freely and without fear of retaliation. In general, never in history have people lived in such peaceful times¹. This is mostly due to the fact that when the rights and liberties of the people are respected and protected, the number of injustices decreases. Only when these rights are recognized can violence be eradicated. Journalists and media professionals are essential for the decline of violence. To protect them and freedom of expression is the way forward, and all countries, irrespective of their differences, should commit to this duty.

Ignacio Vidal Vázquez

Journalist and Human Rights Expert

1 Pinker, S. (2011). *The Better Angels of our Nature*. New York, NY: Viking

II. Foreword



Pilar Alvarez-Laso
Director and Representative
UNESCO Cluster Office for Central America and Mexico in San José

This report on the international conference Ending Impunity of Crimes against Journalists, held at 9-10 October 2015 at the Inter-American Court of Human Rights informs the broader public how involved stakeholders can contribute towards ending impunity.

Impunity towards crimes against journalists is considered one of the main factors fuelling the cycle of violent crime against the exercise of freedom of expression. Judges, prosecutors, lawyers, investigative police, all the operators of judicial systems are crucial to address the issue of impunity. Sharing experience and jurisprudence of International Courts, as well as national references in regard to High Courts, can be an important tool in fighting impunity by raising knowledge about international standards and international law.

The situation of journalists is alarming for the world: over the last decade more than 700 journalists have been killed for bringing news and information to the public. Only one in ten cases of killings of media workers over the past decade has led to a conviction as UNESCO's Director General informed in her message on occasion of the international day (2nd November) to end impunity of crimes against journalists². This impunity emboldens the perpetrators of the crimes and at the same time has a chilling effect on the whole society. Awareness raising, peer-to-peer discussions, knowledge sharing and capacity building are needed to support all actors in judicial systems to understand and act to end impunity and enforce the rule of law in the cases of attacks against journalists, whereas the role of jurisprudence coming from International Courts is of special significance³.

² <http://unesdoc.unesco.org/images/0023/002347/234742e.pdf>.

³ <http://www.unesco.org/new/en/EndImpunity>

In 2013, the United Nations General Assembly adopted Resolution A/RES/68/163, which proclaimed 2 November as the 'International Day to End Impunity for Crimes against Journalists' (IDEI). The Resolution urges Member States to implement definite measures countering the present culture of impunity. UNESCO is mandated in the Resolution to lead the observation of the Day.

This UN resolution condemns all attacks and violence against journalists and media workers. It also urges Member States to do their utmost to prevent violence against journalists and media workers, to ensure accountability, bring to justice perpetrators of crimes against journalists and media workers, and ensure that victims have access to appropriate remedies. The resolution further calls upon States to promote a safe and enabling environment for journalists to perform their work independently and without undue interference.

Within this IDEI context in mind, I thank all the 120 participants from all over the world who contributed to realize this landmark event in San José at the Inter-American Court for Human Rights, in cooperation with the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights of the Organization of American States, and all the involved supportive partners.

Pilar Alvarez-Laso

San José, November 2015



Homage of applause in honour of journalists killed in service

II. Summary

This eBook features the presentations of 35 experts in the fields of Law, Human Rights and Journalism invited to the International Day of End to Impunity (IDEI) for Crimes Against Journalists Commemoration Conference that took place in the Inter American Court of Human Rights in San José (Costa Rica) on October 9-10, 2015.

Each panelist expressed their personal views on the issue of violence against journalists. Their perspectives were marked by the region they came from, as well as by the principles and activities of the institutions they represented at the event. Each panel and subsequent debates were approached from a great variety of standpoints. Even though the panelists brought different and varied ideas to the table, there were some common points the majority of panelists mentioned during the presentations.

First and foremost is that no one disputes that journalists are a necessary condition to the existence of democracy and defense of human rights. By this account, any person who tries to shed light on events, both local and international, under the premises of respect to truth and privacy through the use of freedom of expression can be considered a journalist. The work of media professionals is essential to the proper functioning of a democracy. Citizens need to have access to reliable information, it serves as the point of support to discover the reality of the world. This is a prerequisite for democratic decision making. Biased or manipulated information seek to fool citizens so that they cannot respond to injustices. A society with no freedom or in which freedom is limited is at the mercy of the interests of the powers that be. In consequence, without the work of journalists the balance of power in many

societies is uneven. Information in this case becomes the greatest guarantee for the prevention of injustices and crimes. Another idea shared by the presenters and people in attendance was that states and international organizations have to undertake actions aimed at solving the issue of violence against journalists. Impunity that follows these crimes encourages more brutality. Therefore, it is a priority to develop and execute specific measures geared towards containing the problem.

The potential solutions suggested to fight the violation of the right to freedom of expression focused on the enhancement of national and international judicial mechanisms, the creation of efficient protection mechanisms for journalists and the study and monitoring of cases in order to track results.

In judicial matters, the panelists noted the necessity of implementing capacity-building initiatives for judges on the relationship between freedom of expression and new technologies. The development of new platforms of expression such as social media, Internet, blogs, etc. requires the promulgation of laws that meet the needs this scenario brings and the establishment of legal precedents to prevent cases of violation taking advantage of loopholes. For this purpose justice operators have to be aware of the new expressive realities that come with every social and technological change or advancement and which are the best ways to protect free expression. Many are the countries that punish the free expression of thoughts and ideas under the pretext of defamation. Others do not recognize bloggers or human rights activists that use non-conventional means of communication to express themselves as journalists or communicators.

In these cases the lack of knowledge and competence of the judiciary power has negative impact on these new forms of expression.

In addition, the creation or enhancement of protection mechanisms was also a recurrent subject of debate. Similarly to the judiciary power, special units to prevent crimes against journalists have to be created. These units must be properly equipped and staffed in order to be effective. As crime typologies and patterns in terrorism, drug trafficking or domestic violence are studied and researched the same should be done with crimes against freedom of expression, creating experts units in such field. This increases the chances of prosecuting the executors and masterminds of a crime.

Lastly, the creation of national and international monitoring bodies not only allows to assess the results, but also to pressure governments to comply with international covenants and commitments.

In this sense none of the ideas presented is viable if there is not a clear political, institutional and civic willingness. According to the panelists, many of the cases of violence against journalists are perpetrated by government bodies, hence it is no use creating monitoring bodies and implementing control mechanisms if those in charge of these tasks are part of the problem.

Only governments that are able to expel corrupt members from their institutions and stop the influence of criminal groups will be in a position to contribute to the defense of freedom of expression. Civil societies have to be constantly aware of the situation and in position of recurring to private institutions and human rights defense groups to protect their rights when necessary. Likewise, the international community has to make a push for the right to freedom of expression to be truly respected. To do so, it has to promote the implementation of compulsory measures.

III. Presentations by Speaker

Session 1. Opening: Protocol ceremony

1.1 Pilar Álvarez Laso

UNESCO Director and Representative, Costa Rica



Pilar Alvarez-Laso, Director and Representative, UNESCO Cluster Office for Central America and Mexico.

Maria del Pilar Alvarez-Laso (Mexico) is Director of the UNESCO Cluster Office for Central America based in San Jose, Costa Rica, and the UNESCO representative accredited to the Governments of Costa Rica, El Salvador, Honduras, Nicaragua and Panama. Ms. Alvarez-Laso has Ph.D. Studies on International Migration (Universidad Pontificia Comillas de Madrid); Master of International Migration (Universidad Pontificia Comillas de Madrid); and Bachelor of Communication specializing in Research. Ms. Alvarez-Laso also completed postgraduate studies in Business Administration (University of Georgetown) ;. Refugio European Law (Libre de Bruxelles) and the European Union University (Diplomatic Academy of the Kingdom of Spain).

In her opening address, Pilar Álvarez, UNESCO's highest representative in the conference, expressed her thanks to the panelists, attendants for taking part in the event and to the members of the media for covering the event. After this words of acknowledgement, Ms. Álvarez addressed the issue of impunity from a global point of view, considering it a substantial problem to any democracy.

There are different ways, according her opinion, to cause damage to these media professionals, to conventional and online media staff, especially to the latter in these days. The number of attacks that these media workers receive is worrisome, many lives are lost and the cases of harassment, violence and torture are often reported by the media and the press, which at least represents a silver lining, as cases can be identified and are becoming known.

The beginning of 2015 was marked by the assassination in Paris of 8 journalists who worked for the French satirical magazine Charlie Hedbo. In this regard. Ms. Álvarez pointed out that these were not attacks perpetrated in the front lines. Thousands of people assembled in the streets of Paris to show their support and solidarity, an international civil movement that drew attention to these crimes being indicative of an ongoing conflict or an upcoming threat to peace.

19 journalists have been killed in Latin America so far this year, more than one per month. Each time a journalist

is murdered in the line of duty in one of the 195 UN member states, the UNESCO's Director-General is asked by the UNESCO itself to issue a public statement condemning the crime and urging the authorities to promptly conduct comprehensive and efficient investigations in order to bring perpetrators to justice.

According to the 2014 Report of UNESCO's Director-General on the Safety of Journalists and the Danger of Impunity, less than 6 percent out of the 593 cases of killed journalists reported between 2006 and 2013 were solved. This scenario of rampant impunity, as well as the fact that one UNESCO's founding mandates is the defense and promotion of freedom of expression, has driven the development and implementation of the UN Plan of Action on the Safety of Journalists and the Issue of Impunity. It is a known fact that impunity has an emboldening effect, as it encourages perpetrators to keep up with their criminal activities. At the same time, fuels and perpetuates violence against media professionals, who, consequently, have their freedom of expression restrained. A basic premise is that the whole society is victimized when the most visible collectives, like media and press professionals, are attacked and no punishment is applied against those who commit such attacks. Impunity also affects the principles of the rule of law and democracy and decreases the trust of the civil society in the judicial system.

UNESCO, in collaboration with its network of partners and the UN, actively monitors how countries are tackling the issue of impunity. The UN Plan of Action on the Safety of Journalists and the Issue of Impunity, approved in 2012 by the UN Chief Executives Board, was elaborated during an inter-agency meeting held by UNESCO, who takes the lead in the implementation of these kind of initiatives. This is an international program aimed at developing communication between the stakeholders who take part in the project. UNESCO presents its worldwide known reports to the UN General Assembly, a body which proclaimed 2 November as the International Day to End Impunity for Crimes Against Journalists (IDEI).

In 2014, the French city of Strasbourg hosted the commemoration conference on the occasion of the IDEI. The main point of consensus was that governments and organizations must not work independently from the judicial systems. The 2015 event has served as a strategic opportunity to bend all the agents of the judicial system together. This will send the message that there is a steady commitment to end impunity.

In May 2015, the UN Security Council issued a resolution urging member states to take measures aiming at ensuring accountability for crimes against journalists in the context of armed conflicts. The resolution urges Member States to conduct impartial and independent investigations to bring the alleged perpetrators of crimes against journalists to justice. At this point of her speech, Ms. Álvarez encouraged the participants to implement initiatives and protocols aimed at strengthening dialogue on equal terms, the exchange of knowledge and the analysis of the issue all over the world.

The contribution of the judicial power is key, that is why the Inter-American Court of Human Rights is one of UNESCO's main partners. Ms. Álvarez invited the attendants to focus on this relationship and narrow the gap with the judiciary system. The purpose of such a suggestion is to send a message of commitment and to make real progress in the fight against impunity. Ms. Álvarez also appealed to judges, attorneys and law enforcement bodies to take part in this task, to be committed to provide an environment for journalists to do their job safely and freely, an environment in which perpetrators are arrested, prosecuted and convicted in accordance with the standards internationally established in the field of Human Rights.

The structure of the conference also shows the necessity of conducting more research and publicizing all the advancements made in the realm of comparative law, as well as giving more emphasis to the ability of all the members of the judicial system to manage these cases.

Ms. Álvarez closed her initial address on a protesting note, expressing her concerns on the gender-differentiated nature of the attacks. Male journalists account for 93 percent of the fatal attacks whereas female journalists account for 7 percent of the killings, these crimes often linked to cases of sexual assault.

For this reason fatal attacks are not the only type of crimes that have to be taken into account when discussing impunity. It is true that taking the life of a person constitutes the most loathsome and terrible way to attack human rights, but journalists and media professionals also suffer other types of violence, such as harassment, threats, torture or deprivation of liberty. The conference will provide more support and willingness to report each national governments the progress and commitments that the discussion and debates between the judicial powers will bring.

Ms. Álvarez underlined in her remarks at the closing ceremony the drawn conclusions of the conference. The event has counted with the contributions of Regional Court of Human Rights (African, Inter-American), Multilateral Organizations (OAS, Inter-American Commission on Human Rights, European Council); national judicial systems (Brazil, Costa Rica, Jamaica, Pakistan, Paraguay and Spain) and also important national and international NGOs.

After addressing all the honorable representatives of institutions, panelists, partners and persons that took part in the sessions, Ms. Álvarez mentioned as a summary of the international conference ten main points:

1. The issue of the safety of journalists and the fight against impunity must be combated having in mind the bigger picture: it is part of the broader challenge of safeguarding and promoting freedom of expression and access to information in the regions and countries where the conference will have a greater impact.
2. Crisis of journalism. Crimes against journalists and impunity reinforce media censorship and self-censorship, conveying the message that democratic systems are vulnerable.
3. Structural violence against journalists is mostly due to organized crime and drug trafficking.
4. The state must develop and implement public policies aimed at preventing crimes and safeguarding crimes. In case it has to prosecute and punish.
5. It is of the utmost importance to deploy bodies like Public Attorney Offices, investigation units and human rights ombudsman offices.
6. The importance of considering the international standards on human rights has to be reflected when developing national public policies and ruling cases in which human rights have been violated.
7. It is essential to research more and produce better diagnostics on the characteristics of impunity and its

particularities. Other areas of interest are the efficiency of the existing protection mechanisms and initiatives launched to fight impunity.

8. We should improve the inter-agency collaboration in order to tackle this issue. Many panelists mentioned the relevance of the UN Plan of Action, but also highlighted that further work must be done to adapt this UN Plan of Action to national realities.

9. Keep fostering the cooperation with the judicial systems is quite fundamental to address the problem. Capacity building, knowledge sharing, judicial cooperation, sharing of good practices and strengthening of schools of judges are among the mentioned tools.

10. It is also important to underline the need for the development of special policies when the safety of particular groups of journalist is at stake: community journalists, journalists from particular ethnical groups, women with a gender perspective on safety of journalists.

Just a few weeks ago, UN member states had agreed on a new set of development goals. And SDG 16 makes clear that the issues we have been discussing here: freedom of expression, freedom of information, safety of journalists, access to justice are in the check list of commitments reached by head of states before the international community. It is also our job to contribute to the full accomplishment of this goal.

1.2 Mauricio Herrera Ulloa Minister of Communication of Costa Rica



He worked as a journalist for the newspaper La Nación from 1992 to 2009, specialized in Politics and investigative reporting. In 2010 he took over as Press Coordinator of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights of the Organization of American States, a position where he remained until 2012.

He was Director of the Costa Rica's weekly journal from 2013 to 2015. He left the post to take over as Minister of Communication in the Solís Rivera administration.

He reached the Court 10 years ago as a victim. He had to go through a legal proceeding due to his activities as a journalist, a proceeding that lasted 9 years and initiated by an ordinary court. He filed an appeal and eventually won the case. It should be noted that he litigated against the Republic of Costa Rica. The case set an important precedent in the country. As Minister of Communications of Costa Rica, Mr. Herrera is fighting to defend freedom of expression.

Costa Rica enjoys an advanced position regarding freedom of expression compared to the other Latin-American countries, which does not mean that there is no room for improvement in certain aspects in this matter.

No cases of violence have been reported recently. The first link of protection for freedom of expression is the prevention of violence. Violence is effectively prevented through the enforcement of a zero-tolerance policy. This requires a very fortified legal system.

Right now, the Congress is working on the creation of bill of right to access to public information aimed at allowing the citizenship to claim certain information from the public sector without having to go to the courthouse. This is a way to support transparency. Not having a law of this nature forces the citizenship to file constitutional complaints. More often than not, the administration is not as agile as it should be so the process becomes more complex.

An Official Publicity law aimed at establishing rules to access to access the official publicity Of the State is necessary. Most importantly, the law will not be used as a tool to punish or reward the activities of the media. It is very important that there are rules devoted to guarantee homogeneity.

The third law requires a reform of the criminal code so that people who report stories of public interest would not be convicted for this matter. The main objective is that there will not exist the fear to be indicted for reporting such stories.

In the next few weeks consultations will be made to the people that will be affected by this laws before presenting the project to the Congress.

Mr. Herrera is now in an interesting position. After 20 years as a journalists, he holds now a relevant post in the Costa Rican administration, so he is exposed to criticism coming from so many different sectors, even from former colleagues. Public employees are voluntarily exposed to criticism, they should be more tolerant, it is part of their duties and democratic convictions, and it is considered the reflection of a vigorous society.

Regarding crimes against journalists in the past, he recounted how successful judiciary system was in the investigation of the case of Parmenio Medina, killed in 2001. An effective judicial response led to the resolution of the case. The case of Ivannia Mora, killed in 2003, who was her classmate in the University of Costa Rica, did not lead to a conviction due to flaws in the proceedings, and was remained unpunished.

And lastly the case of “La Penca” in 1984, a bombing attack that sought the death of a member of the Nicaraguan counter-revolution, where 3 members of the media died, one of them worked for the Tico Times and the other 2 For a Costa Rican station. This case remains unpunished, due to its complexity. Mr. Herrera warned that the case should not sink into oblivion, as there are colleagues awaiting for justice. This will serve to ensure the right to the truth.

1.3 Zarela Villanueva President of Supreme Court of Costa Rica



Costa Rican judge, President of the Supreme Court of Justice of Costa Rica. Ms. Villanueva has a Degree in Law by the University with a specialization in Agrarian Law, holds a Master's Degree in Social and Familiar Violence by the UNED. In 2010 was appointed as Vice President of the Supreme Court of Justice and was the interim President of said institution after Mr. Luis Paulino Mora Mora, at the time President of the Court, passed away. In May 2013 she was elected President, being the first woman ever to preside over the Costa Rican Judiciary Power.

Judge Villanueva opened her presentation by expressing her gratitude for being part of the Commemoration conference on the occasion of the International Day Against Impunity for Crimes Against Journalists. The conference stresses the importance of respecting freedom of press and expression. She also remarked the United Nations General Assembly proclaimed 2 November as the International Day to End Impunity for Crimes against Journalists (IDEI) to commemorate the death of two French journalists in Mali in 2013. It reminds the international community the importance of keeping alive the commitment of respecting fundamental rights alive. Fair and democratic societies are built upon this commitment.

Freedom of expression, free press and the right to receive information constitute an unbreakable guarantee for the full exercise of other rights. Therefore, for people whose aim is to develop and strengthen democratic values, to establish protection mechanisms geared towards safeguarding freedom of speech is key, since this right is the basic pillar of a democracy. In this time today, the purpose of controlling media is to silence the voice of the journalists. Authoritarian regimes are known for using this strategy, which helps their perpetuation. For this reason, Ms. Villanueva, on behalf of the Costa Rican judiciary power, reaffirms her commitment to safeguard freedom of expression. Globalization and technological advances present great challenges, as physical and non-physical borders are more diffuse than ever. Moreover, the distinction between national and international news is becoming meaningless.

This is impact of information on today's world, hence the fear and the tendency to silence voices. Exposition does not solely come from within borders, it is created at the international level. Political, economic, medical or sports news have a profound impact on the society and produce significant changes. This, in turn, generates fear, imposes restrictions, encourages the commission of crimes and ultimately provokes the death of innocents.

In last decade more than 700 journalists have lost their lives while in the line of duty. In 2014 alone, the UNESCO General-Director reported the death of 87 journalists, media professionals and social media activists. According to statistics collected by UNESCO, only one out of ten cases result in a conviction. Moreover, between 2006 and 2013 less than 6 percent of the cases have been resolved. In addition, in most cases there is no information available on the state of process.

In view of the above, it is indispensable to have spaces devoted to the discussion and exchange of ideas on the risks of limiting the free practice of journalism. In one of the most important resolutions of the IACHR, the *Mauricio Herrera Ulloa versus Costa Rica* case, the Court analyzed how some relevant standards can be applied to freedom of expression, the role it plays in a democratic society, its individual and social dimensions and the intense scrutiny those that work in the public sector have to face.

The Court has been very clear on the guarantees that have to be provided for the rights to be fully exercised, recognizing the role of the constitutional chamber in the expansion and effective application of these rights. The IACHR, through its pronouncements, has prolifically exhorted states and institutions to defend the right to freedom of information.

Judge Villanueva also remarked the importance of having a public information law. The administration she represents has implemented a transparency policy for the proper functioning of the institution. The implementation, two years ago, of this groundbreaking open government policy makes information regarding the functioning and resource allocation of the institution available for the citizenship. Therefore, Costa Rican layman and laywomen have the tools to exercise control over the institutions.

Ms. Villanueva also warned that there are cases that should not sink into oblivion, as Costa Rica has had its fair share of crimes against journalists. Speaking of forgotten cases and how oblivion leads to impunity, Ms. Villanueva talked about the bomb attack that took place in La Penca (Nicaragua) on May 30 1984. The attack killed 7 people, 3 of them journalists and left 20 people injured. Despite all the efforts made to identify the perpetrators, the crimes were not punished. This case, like many others, raises the following question: which actions does the judiciary power have to undertake in order to prevent, protect and punish attacks on journalists? The answer might lie in conducting more research, in promoting capacity-building among all the professionals associated with the administration of justice and ultimately in raising awareness within all the spheres of society.

It is important to stress that the victims are entitled to have an active role in the investigation of crimes, participating in all the phases of the proceeding. Thus, institutions have to provide free legal assistance to the victims. These rights should be raised to the constitutional rank to make them effective. At this point of her presentation, Ms. Villanueva introduced the case of the journalist Mora, a murder that has been discussed on many occasions, and explained that even though it remained unpunished, the case was investigated and a trial was held. Therefore, these aspects -impunity because the crimes have not been judged and impunity because no conviction has been issued in a trial-, are often misunderstood. Considering this, Ms. Villanueva thinks that such relationship has to be analyzed, identifying which aspects relate to freedom of the press and what constitutes impunity in a legal proceeding.

Ms. Villanueva also expressed how much she respect journalists, her uncle was Manuel Villanueva Padilla, a pioneer in the defense of journalism in Costa Rica. Furthermore Ms. Villanueva also added that her sisters have taught her which are the efforts required to practice the profession with commitment, objectivity and responsibility.

Lastly, she closed her presentation quoting Ban Ki-moon, UN Secretary-General: “no journalist anywhere should have to risk their life to report the news”.

1.4 Humberto Sierra Porto President of the Inter-American Court



Humberto Sierra is a Colombian jurist, lawyer and justice. Currently President of the Inter-American Court of Human Rights.

Law and Social Sciences graduate from the Externado de Colombia University. He specialized in Constitutional Law and Social Sciences in the Centre for Political and Constitutional Studies (Madrid). He holds a PhD in Public Law, Political Science and Judicial Philosophy from the Autonomous University of Madrid. Professor of Constitutional Law at the Externado de Colombia University. Researcher at the Institute of Constitutional Studies Carlos Restrepo. Author of several publications in the field of Constitutional Law, sources of law and parliamentary law. Litigator for the Colombian Council of State, legal consultant at the House of Representatives and General Attorney for Public Office. From September 2004 to 2012 he served as justice of the Constitutional Court of Colombia. President of the Inter-American Court since 2012.

Humberto Sierra opened his presentation by remarking the importance of holding international forums such as this one in order to promote the exchange of ideas and the participation of key agents in the field of justice and defense of the right to freedom of expression. The Inter-American Court of Human Rights represents more than 500 million people in the world and is an invaluable source of jurisprudence for the countries that have ratified the treaties. In this sense it should be noted that 70% of the laws are based on international law. The mission of these courts of justice is not only to provide justice to direct addresses of the sentences they issue but also to serve as an inspiration for states.

The Special Rapporteur for Freedom of Expression assesses that between 2014 and 2015 40 journalists and media professionals have been killed in the American continent.

The UN Security Council has repeatedly condemned, through resolutions, violence against journalists and the exercise of freedom of expression. In 2012 the UN Action Plan Against Impunity was approved, a plan aimed at ending impunity for crimes against journalists.

Freedom of expression is an individual and collective right. A democracy that is not fueled by relevant and truthful information undermines the decision-making ability of its citizens, leaving them at the mercy of manipulation and propaganda.

Governments have to guarantee the protection of the rights of the citizens. There are different ways to actively

protect them, namely:

The obligation of implementing public policies on prevention of attacks against journalists. Journalists face some specific dangers, mostly due to type of information they deal with, the places they visit, and the people they get in touch with, etc. In this sense it would be necessary to create institutions that are equipped with fast-response protocols.

To raise awareness on the importance of respecting freedom of expression and the work of journalists as well as promoting human rights education.

The creation of special investigative units of crimes against journalists. This body shall consist of police officers, attorneys and judges specialized in freedom of expression who know the patterns of attacks on journalists, who can undertake the study of precedents and are able to develop specific methodologies. This increases the chances of devising efficient solutions.

Impunity is the systematic lack of investigation and prosecution of the perpetrators of a crime, which generates a general state of permissiveness. Besides, it conveys a threatening message to journalists, creating in turn a climate of self-censorship.

Freedom of expression on the Internet has become a matter of special interest in the last years. Internet is the main source of expression and information of a vast number of people. For this reason to legally protect this right in the context of new technologies is a priority. Likewise the definition of journalist should be revised, considering all those who exercise said right as such, regardless of their academic or professional background. Some benefits of the trade should not only be restricted to those that hold a degree or are members of associations.

To be aware of the ever-changing reality of communication allows to foresee upcoming menaces. Being the use of violence the most extreme and often fatal form of censorship, there are other ways to silence the voice of people, albeit more subtle. To protect this right through legislation and national and internal jurisdiction is the best weapon justice has to fight violence and impunity.

Session 2. Keynote Speakers: The role of the Judiciary Power in Protecting and Promoting Freedom of Expression

2.1 Claudio Grossman

President of the Inter-American Institute of Human Rights, Costa Rica
Dean of American University Washington College of Law, USA



Claudio Grossman (born 1947) is a lawyer and law professor. He is the dean of the Washington College of Law at American University in Washington, D.C.. Grossman served as vice chair of the United Nations Committee Against Torture (2003-2008) and now as Chair (2008-present). He is a former member of the Inter-American Commission on Human Rights.

Grossman was born in Santiago, Chile. He attended the law school at the University of Chile in Santiago. He received his Licenciado en Ciencias Jurídicas y Sociales in March 1971, with a summa cum laude thesis "Nacionalización y Compensación," coauthored with Carlos Portales. In addition to his duties as Dean, Claudio Grossman is also one of the co-directors of the Center for Human Rights and Humanitarian law at WCL, as well as the Raymond I. Geraldson Scholar for International and Humanitarian Law.

Freedom of expression is a good indicator of the condition of a democracy, even though the term may have different meanings. However, as Mr. Grossman concedes, a democracy has some very distinctive elements that make it easy to recognize. A democracy is characterized by free and informed elections, independent legislative, executive and judiciary powers, and an engaged civil society. In this sense, and considering the characteristics of this form of government, it is fair to say that there cannot be democracy without freedom of expression.

Freedom of expression is exercised to its fullest when the civil society is really committed to monitor the activities of the government. Such freedom is no longer based in the right to stand in a public space and talk, some mechanisms have to be implemented and protected in order to make freedom real and feasible. Access to means of communication and new technologies also play a significant part.

Which, besides violence, are the restraints to freedom of expression? National legislations that limit broadcasting licensing, censorship, seizure of publications, bribery, limitations in the overpassing of press passes, lack of normative frameworks aimed at preventing monopolies and insult laws that criminalize any expression of discontent against public servants are some of the forms used to restrain this right. Regarding the latter form, public servants should embrace the role they play in society and realize they are more exposed to criticism and that, by itself, does not constitute a violation of their right to privacy and honor. If there is an actual violation

of rights, the case should be addressed through civil proceedings, and not by means of criminal law. Only 7 Latin American countries keep laws of this nature in their constitutions, but not all apply them. This is, per se, an important step forward. With regard to the violation of the right to honor, only single individuals should have this right. Institutions, on the contrary, have to resort to other rights. National security has often been invoked to restrain or even suppress the right to freedoms of expression. Other pretexts are public order, morality, personal honor, etc. Impunity is the ultimate restraint, a limitation that impedes the practice of the profession.

All these actions are aimed at limiting or nullifying a fundamental right that not only affects people individually, but also collectively.

The American Convention on Human Rights introduced the articles 13 and 14 to defend this right. In addition, the Convention has the power to take cases to the IACHR, which has jurisprudence on matters of this nature. The American Convention on Human Rights has ruled on some cases, which did not make it to the IACHR, such as the case of Jehova's Witnesses versus the Republic of Argentina. During the dictatorship people of this faith refused to pledge allegiance to the regime.

According to Mr. Grossman, some collectives, such as indigenous tribes or the LGTB community, who cannot exercise their rights properly need special protection to exercise them, especially freedom of speech.

Pluralism of the media is a basic pillar for freedom of expression, and it should be promoted and defended. Pro-government monopolistic groups produce propaganda, not information, which in turn suppresses any type of debate. This degrades the very democratic task of decision-making. The IACHR established in the Kimmel versus Argentina case that governments must not only minimize restrictions on the dissemination of information, as well as fostering informative pluralism.

Based on the principle of pluralism, The American Convention on Human Rights and the IACHR have to implement positive measures towards the promotion of ideological diversity in media.

2.2 Edison Lanza

Special Rapporteur on Freedom of Expression, OAS Washington D.C.



Edison Lanza is a Uruguayan journalist and lawyer, he has been a consultant to international organizations on freedom of expression and the right to information, attorney for the Uruguayan union of journalists. Since July 2014 holds the post of Special Rapporteur for Freedom of Expression, elected by the Inter-American Court of Human Rights.

He has founded and directed several organizations aimed at defending freedom of expression. He has also been a member created to monitor the compliance of standards related to this right.

He also has played an important role in the defense of these rights, as he has taken some emblematic cases to the Inter-American System of Human Rights. He has also collaborated in the drafting of numerous publications and in the development of various legal initiatives at a regional and national level.

Edison Lanza began his presentation by highlighting the value of the profession of journalist, in his words “no journalist would have to be a hero, their contribution to democracy is more than enough” behind this quote there is an understanding that behind all these attacks there are people who are driven by an inner strength are willing to risk their lives, and who do their job in a region where an existing problem of structural violence restrains any protection.

In this sense, people tend to think that answer only come from the executive power, however, the actual protection of the figure of the journalist is properly understood when states engage in defending their rights against abuses of power to which are subject, that is, the intervention judiciary and legislative powers, which represents a qualitative jump in terms of complying with the international obligations. When it comes to defending the victims of the attacks on freedom of expression we must act in the strongest way possible, also it is crucial that the judges interpret the law creatively not only in the light of national standards, but also to consider international jurisprudence in order to provide to provide greater protection.

Mr. Lanza deemed many of the advances made by the Inter-American Court of Human as brilliant. Proof of this is the acknowledgment of the existence of indirect censorship, the most recurrent modality of censorship across constitutional states in America. It is characterized for being a less visible form of abuse. Other steps taken by the Court have been the inclusion of the community sector in the defense of the non-use of criminal law to prosecute any expression of public interest, and the limitation of other rights if they interfere with freedom of expression, provided that there are clearly-defined and justified reasons to do it.

Even though the future seems favorable, it cannot be denied there are still obstacles to overcome. Among them, Mr. Lanza mentioned the inability to do something to prevent impunity and solve those that remain unpunished in the region, the challenge that cases involving new technologies pose, the magnitude of their impact and finally, the fear of many judges, who according to the panelist could be labeled as conservatives, to ensure maximum protection of journalists and communicators.

2.3 Diego García Sayán Judge, Inter-American Court of Human Rights (IACHR), Costa Rica



Diego García Sayán is a Judge of the Inter-American Court of Human Rights. Former Minister of Justice and Foreign Affairs of Perú. He served as UN Senior Official as a representative of the UN Secretary-General for the verification of the Chapultepec Peace Accord to bring peace to El Salvador, reporting the UN Security Council. Mr. García Sayán has presided different big, varied and complex governmental, intergovernmental and non-governmental organizations. His areas of expertise are International Law and Human Rights. As Minister of Justice of Peru he fostered the normalization of the relationships between Peru and the Inter American Court of Human Rights. The UN Secretary-General appointed as Mr. Sayán Chairperson of the ONUSAL Human Rights Division. He was also posted to command the Election Observation Mission of the Organization of American States in Guatemala in 2007.

Mr. García Sayán opened his allocution highlighting four standards the IACHR established with regard to freedom of expression, which have been subject to constant jurisprudence since the IACHR rendered, 30 years ago, an advisory opinion on the matter of compulsory membership in an association prescribed by law for the practice of journalism.

The first standard states that freedom of expression in all its forms and manifestations is a fundamental and inalienable right of all individuals. Additionally, it is an indispensable requirement for the very existence of a democratic society. Every person has the right to seek, receive and impart information and opinions freely under terms set forth in Article 13 of the American Convention on Human Rights. The Court, in this sense, gave the *Granier versus Venezuela* case a special significance considering that states have to promote public policies and even regulations to safeguard freedom of expression. However, all rights have to be equally safeguarded.

With regard to risks and threats to the life of journalists, Mr. García Sayán remarked that the Court's jurisprudence on the protection of fundamental rights is very solid. Obviously, the fundamental right of life is among these rights. Notwithstanding, states have to apply reasonable standards given that their duty is to prevent crimes, not to prevent some crimes while violating fundamental rights. In cases in which a state can be held responsible for not complying with its international obligations, mostly internationally wrongful acts and international crimes, the following elements have to be taken into account: the state has to be aware there is a real or immediate situation of risk, that the potential victim or victims are identified and that there are reasonable chances of preventing the crime.

A prime example of this is the murder of three women in Ciudad Juarez, a case known as Cotton Field. The victims were found dead after their families reported them missing given the full names of each one of the girls. The Court concluded that the risk these girls were facing when they were kidnapped was real and that Mexico had not acknowledged its international responsibility for the damages caused.

Mr. García Sayán ended his presentation reflecting on how the Court is fighting crimes against journalists. In his view, the intervention of the Court is very limited, mostly because the IACHR is a reactive body rather than a proactive one.

However, the IACHR has had substantive cases in the field of freedom of expression in which provisional measures have been taken to provide protection. Such protection has been life-saving for lots of journalists. Many of the cases, up to 70%, come from the same country: Venezuela. In light of this scenario, more resources and efforts should be invested to implement prevention mechanisms.

Session 3. Problem diagnosis: the dimensions of violence against journalists and the issue of impunity

3.1 Germán Rey Beltrán

The Gabriel García Márquez New Iberoamerican Journalism Foundation, Colombia



Renowned social communication researcher, Member of the Advisory Board of the New Iberoamerican Journalism Foundation, Member of the Board of the Free Press Foundation. Some of his recent publications are “Escritos sobre periodismo” (Random House Mondadori, 2007), “Los relatos periodísticos del crimen” (F. Ebert, 2006), El cuerpo del delito, (F. Ebert, 2005), “Oficio de equilibrista. 21 casos periodísticos” (Bogotá, El Tiempo 2002), “Discurso y razón. Una historia de la ciencias sociales en Colombia” (Tercer Mundo Editores, 2000).

In recent years a series of initiatives on the issue of impunity for crimes against journalists have arisen in Colombia. The Protection and Alert System is an example of that. Initially launched by journalists has ended up being a system for both state and civil organizations. Furthermore, there is a reparation process for the victims of the armed conflict against the FARC that has taken place in the last decades. Many journalists are among the victims of the conflict. The Attorney General's Office is committed to the creation of an area of analysis on the issue of violence against freedom of expression due to the blatant impunity that has plagued the country for so many years. In a recent report issued by the Colombian government on the cases of violence against journalists in the last 70 years, 152 journalists have been killed between 1977 and 2015. Germán Rey Beltrán, raconteur of this report, remarks that 47% of the 152 cases have prescribed and in only 4 of them the masterminds were prosecuted.

A recent case was the sentence issued by the High Court of Manizales on the assassination of the journalist Orlando Sierra, assistant director of the newspaper “La patria de Manizales” at the doors of the newspaper. His daughter witnessed the crime. 13 years passed until the court issued a sentence, although the Criminal Appellate Division has not issued any ruling on the case. It was found that the masterminds were local politicians. 9 people related to the prosecution were killed over the 13-year span. This is a clear indication of the magnitude of the problem.

Many of the journalists killed in Colombia belonged to small outlets that operate in remote areas, mainly covering the internal armed conflict. In this sense the peace treaties of Havana may contain the cases of violence against journalists. The conflict has led to the infiltration of criminal groups in the spheres of power. In many cases politicians and criminal or paramilitary groups join forces to perpetrate an attack.

Impunity is not just a judicial issue. Apart from these institutions there is a social and cultural reality in which there is still room for improvement regarding raising awareness on subjects such as corruption, impunity and respect for human rights. Societies are not fully aware of the importance of freedom of expression and the right to information and how violations of these rights affect social and democratic life. Societies should not only worry about the physical integrity of media professionals, but also of the integrity of Journalism. The defense of pluralism and objectivity has to be a matter of concern for civil societies. Even though the killings of journalist have decreased since 2006, journalists still have to deal with threats and censorship. There is still a long way to go for journalists to freely and safely exercise their right to freedom of expression.

3.2 Emmanuel Combié

Emmanuel Combié Head of the Latin American Desk of Reporters Without Borders (RSF)



Emmanuel Combié is Head of the Latin American Desk of Reporters Without Borders (RSF), based in Rio de Janeiro since September 2015. Spokesperson for the institution in South America, Central America and the Caribbean. He holds a Degree from the Kedge Business School and from the Institute of Journalism (IPJ). He started his career in Groupe Express-Roularta. He has also worked for other French media outlets, like Expansion and Enterprise. Former editor-in-chief at Yahoo Finance Paris. He was in charge of defining the editorial line of the site, as well as managing collaborations and audiovisual projects. His areas of expertise are micro and macro economy, digital economy and SME (small and medium-sized enterprises), among others. Head of the Latin American Desk of Reports Without Borders since July 2015.

Mr. Combié spoke on behalf of Reporters Without Borders, and opened his presentation discussing the efforts the organizations is making to fight impunity, working relentlessly for the defense of the rights of threatened journalists across the globe.

In his words, “vicious circle” is the term that better describes the situation, as impunity and slowness of justice in the identification of the perpetrators fuel both a climate of mistrust towards the profession, as well as a climate of self-censorship, thus diminishing the work of journalists.

Using data collected by the UN in this regard, Mr. Combié explained that in recent years, 9 out of 10 cases of assassination the perpetrators were never punished. Reporters Without Borders also reports that as for 2015, 20 journalists and cyberactivists have been assassinated, most of them in Brazil, Colombia, Honduras, Guatemala and Mexico. These countries are among the most dangerous places on Earth for the practice of journalism. To date, only a small percentage of perpetrators have been prosecuted and incarcerated. There are numerous reasons that explain this shocking situation: inefficient legislation, staff shortage, corruption, power concentration, etc.

Focusing on the current situation in Honduras, one of the most dangerous countries in America, Mr. Combié mentioned the case of Radio Globo, one of the most powerful independent broadcasters in the country, to illustrate the hell journalists have to go through in Honduras. In February 2015, Erick Arriaga, journalist for this media outlet, was assassinated on his way home. Authorities denied that the assassination had anything

to do with Arriaga's work, they argued that a gang perpetrated the crime. Members of Radio Globo staff had previously denounced threats against them since the 2009 coup d'état. To date, 5 employees of this station have been killed. Radio Globo director David Romero Ellner, has also received death threats, and is currently under police protection. Mr. Romero Ellner has been accused of plotting against the government. In addition, he has been threatened with imprisonment, although this threat has no judicial base.

Mr. Combié also talked about the case of the assassination in Minas Gerais (Brazil) of an investigative journalist and founder of the blog Coruja do Vale, which served him to exemplify how a story is often more impactful than mere stats. Said journalist was beheaded because he was working on a story about arms trafficking and child prostitution. The perpetrators have not been identified due to lack of political commitment and corruption, which are the main problems in Brazil.

Among the Recommendations Reporters Without Borders has suggested to fight impunity, the following stand out:

- Authorities, both local national, should devote more resources to their judiciary systems, and if needed, remodel them thoroughly.
- Protection mechanisms for journalists who had been threatened or attacked should be implemented, and in case there are already, they have to be revised.
- Monitoring bodies aimed at controlling the proper functioning of the prosecution offices and protection systems must be implemented.
- The stats concerning attacks on journalists and media professionals must be made public, as well as the information regarding the judiciary resolution of cases.

These recommendations highly depend upon the commitment and willingness of governments, civil society organizations are not in position to implement significant changes. The support of the international community and courts of justice, such as the Inter-American Court of Human Rights, is essential for protecting the rights of journalists and for making public the numerous cases of impunity.

Mr. Combié also wanted to convey that Reporters Without Borders has issued a petition to the UN Special Representative demanding for the creation of a special representation mandate for the protection of journalists. Even though there is already a Special Rapporteur on this matters, Reporters Without Borders considers that solely having an independent expert is not enough. For this reason, the organization encourages the creation of such position, in order to address the issue with more efficiency and interactivity. It is this organization's hope that the recommendation turns into a resolution. Countries like Argentina, Colombia and Costa Rica have supported the initiative. At this point of his presentation, Mr. Combié appealed to the people in attendance to spread the word on the goals of the petition, as it is aimed at fighting impunity and fortifying the protection mechanisms for journalists.

Mr. Combié closed his presentation by mentioning an initiative launched by the IFEX (formerly known as the International Freedom of Expression Exchange), named No Impunity, inviting all the people attending the panel to learn more about it.

3.3 Joel Simon

Executive Director Committee to Protect Journalist (CPJ)



Having joined CPJ in 1997 as Americas program coordinator, Simon became deputy director in 2000 and was chosen to head the organization in 2006. As a journalist in Latin America, Simon covered the Guatemalan civil war, the Zapatista uprising in Southern Mexico, the debate over the North American Free Trade Agreement, and the economic turmoil in Cuba following the collapse of the Soviet Union. A graduate of Amherst College and Stanford University, he is the author of *Endangered Mexico: An Environment on the Edge* (Sierra Club Books, 1997). His second book, *The New Censorship: Inside the Global Battle for Media Freedom*, was published by Columbia University Press on November 11, 2014.

CPJ recognizes violence against journalists and impunity as among the greatest threats to press freedom and freedom of expression today. Though numbers and methodologies vary, the consistent fact is that journalists are deliberately targeted and killed every year in high numbers and the perpetrators nearly always get away with it – 90 percent of the time, in fact.

There is no question freedom of expression and the collective right to information is at tremendous risk so long as impunity goes unaddressed. Whether a blogger is hacked to death for expressing critical views of religious extremism in Bangladesh; foreign correspondents trying to bring news Syria's conflict are beheaded on video; a Mexican reporter covering criminal groups is shot even after threats drove him to seek refuge in the capital; a Russian journalist severely beaten for investigating corruption and dies years later from his injuries; or a Somali broadcaster is gunned down in the middle of a busy restaurant; the intention and impact of these acts is to stop what is being reported. That impact is multiplied when the killers face no consequences.

Nine years ago, CPJ launched its global campaign against impunity. With the understanding that a means to assess and track progress or setbacks on the issue of impunity is crucial to campaigning against it, they developed an annual survey, the Global Impunity Index. In October they launched the 2015 Index, the 8th edition.

The Impunity Index⁴ spotlights countries with the highest rates of impunity by calculating the total number of unsolved journalist murders as a percentage of a country's population. It includes countries with five or more

4 <https://cpj.org/reports/2015/10/impunity-index-getting-away-with-murder.php>

unsolved murders that have taken place within the last 10 years [September 1, 2005 to August 31 2015]. Unsolved cases are those where no suspects have been convicted. The Impunity Index⁵ shows which countries have met this threshold and how they rank against each other. The countries with the highest rates of impunity according to their methodology are Somalia, Iraq and Syria followed by the Philippines.

Some of the observations about this 2015 report are:

1. Impunity in journalists' murders is concentrated in a relatively small number of countries. The 14 countries on this year's index account for 83 percent of unsolved murders worldwide during the 10 year period. Nine of these countries have appeared on the index every year since the first edition in 2008. Global impunity rates could be reduced significantly if these countries mobilized against it.

2. Impunity is spreading. This year two new countries joined the index – South Sudan and Bangladesh. Their additions underscore risks for journalists operating in conflict environments – five journalists were killed in an ambush of a convoy in South Sudan in January this year and others have been targeted since; and for those writing culturally sensitive issues online – as were four bloggers slain in Bangladesh this year.

3. War and political turmoil may sometimes be backdrop to impunity but many countries with entrenched impunity are relatively stable and describe themselves as democracies. As usual, the Impunity Index includes many countries wracked by conflict (Syria, Iraq, Somalia) or where potent illegal armed groups actively menace journalists, like Pakistan [9th] and Nigeria [13th]. Still it is worth noting that the Philippines, Russia, Brazil, Mexico and India together have let the killers of at least 96 journalists go unpunished over the past decade.

4. Censorship trumps justice. States are often more likely to jail journalists than find their killers. Governments often lay blame for impunity on broad, endemic problems such as institutional weaknesses and conflict, but authorities seem to have no problem enforcing so-called rule of law when it comes to insult, defamation, or subversion. At least six countries on the Index had journalists in jail at CPJ's last prison census.

5. States and intergovernmental organizations are simply not living up to their national and international commitments to address impunity. CPJ has now tracked impunity through the Index for eight years and for the most part, the numbers simply aren't coming down significantly. A growing amount of good practices have been identified but they are rarely put into place effectively. Far greater diplomatic pressure, follow up and consequences must be brought to bear on states that flout regional court decisions, neglect to account for impunity through UNESCO's judicial status inquiries, and ignore the resolutions they have adopted.

That said some positive developments should be noted, and more importantly learned from:

Colombia fell off the index this year. While the improvement can be largely attributed to a general decrease in political violence, the government's protection program for journalists some cases have been resolved, including the prosecution of the mastermind behind the murder of popular editor and columnist Orlando Sierra.

In fact this year the masterminds in at least three cases, including Sierra's, were convicted (Orlando Sierra, Colombia, Anastasiya Baburova, Russia, Uma Singh, Nepal) though only one (Russia) is an Index country. This is a

⁵ <https://cpj.org/reports/2014/04/impunity-index-getting-away-with-murder.php>

rare departure from the norm – those who order attacks against journalists are persecuted in less than three percent of murders. Worldwide, convictions have taken place in at least five cases. There could be more if governments take basic steps toward accountability, starting by responding to UNESCO Director General's periodic requests on status updates on outstanding cases. In the most recent report, response rates were a miserable 40 percent.

This progress pales to the perpetuation of violence – at least 33 journalists have been murdered for their work in 2015 alone – but it says one thing we should take away: Impunity may not be eradicated any time soon, but it can be reduced. We need to apply a great deal more pressure on the handful of countries with the worst records in the hope that this will help generate the political will required to produce justice. Only when justice is delivered consistently will those who seek to silence journalists through violence begin to think twice about their actions.

3.4 Roberto Rock

Vice-President of the Commission against impunity, Inter-American Press Association (IAPA)



Roberto Rock is currently the Vice President of the Commission of Liberty of Press and Information of the Inter-American Society of Press (SIP).

Graduated in Political and Social Sciences by the UNAM, Mr. Rock joined El Universal, one of the most read newspapers in Mexico, in 1978. He worked as a reporter, editor and editorial director, post he hold in 2010. He has covered events in the United States, Central America, Middle East and Asia.

He was a member of the Oaxaca group, which in 2001 launched the Law of Access to the Public Information. He is a member of the SIP, which nearly 20 years ago created the Commission against Impunity, aimed at documenting the most paradigmatic cases that have taken place in the country over the las decades. Since its inception, the Commission has reported 29 cases.

A very well-known case is the assassination of Nelson Carvajal, a Colombian journalist murdered in 1998. The Commission has recently taken the case to the Inter-American Court of Human Rights to demand the Colombian authorities to comply with their duties and solve the case.

Two constants define impunity in the region, according to Mr. Rock: the progressive escalation of organized-crime related violence in Latin America. Organized crime is considered the biggest de facto power in the region, whose ties with the administrations gradually weakens the institutions.

Authoritarianism is another factor. Intolerance and political persecution plagued the region not long ago, and despite all the democratic progress made in recent years, authoritarianism is reappearing again albeit with a more subtle approach. Examples of that are the smear campaigns, the different forms of harassment or lawsuits.

Mr. Rock manifested the necessity of generating a new debate on self-censorship, knowing that in countries like Mexico is causing that half of the media is not being able to cover political tensions, or even practiced by economic monopolies.

At the same time he explained the necessity to change the approach from which the social phenomenon of the protection to journalists is observed, given that in many occasions it has been proven that when a journalist insulted, attacked or murdered, it seems that exercising the profession is more an aggravator than a mitigating circumstance.

3.5 Sylvie Coudray

Chief of Section, Communication and Information Sector of UNESCO



Sylvie Coudray has been working at UNESCO for almost twenty five years. She is the Chief of Section for Freedom of Expression in the Division of Freedom of Expression and Media Development.

She has a M.Ssc. in History (Sorbonne) and a M.Ssc in media and communication (Institut Français de Presse). She has edited several various publications in various media related fields such as media and new communication technologies, media and terrorism and media in conflict areas.

One journalist is killed every five days. This has been the appalling trend for 10 years. In total, more than 700 journalists all over the world have been killed in line of duty since 2006, according to UNESCO Director General's Report on the Safety of Journalists and the Issue of Impunity.

This is more than 700 people, who dedicated their lives to freedom of expression and freedom of press. 700 extremely courageous people, who believed that people have the right to be informed in order to make proper decisions for their life, and that this right is paramount and essential for the society to function properly. These journalists come in all shapes, unknown or famous, from poor or rich countries, running a blog providing public interest information, or working for a local community radio or an international media network. They are all heroes of information.

This day, the 2nd of November, International Day to End Impunity for Crimes against Journalists, is dedicated to them all. Today is a day to remember them and to call for justice. This situation is made worse, because impunity has become a terrible trend. Less than 7% of cases of journalists killed have led to a conviction, which is less than one in ten cases.

We are talking about just 55 cases out of more than 680 from 2006 to the start of this year. This is the ratio of resolved cases according to information received by UNESCO from States where journalists have been killed.

These figures do not even include the many more journalists who on a daily basis suffer from non-fatal attacks, including harassment or violence against them and/or their relatives, torture, enforced disappearances, arbitrary

detention, intimidation and harassment in both conflict and non-conflict situations.

The situation is most dramatic in conflict situations, where violent extremists have carried out acts of abhorrent violence against journalists, to crush freedom of thought and expression – the beheadings of journalists by ISIS embodies the steep challenge we face today.

At the same time, most journalists are killed in less prominent ways, but with equivalent poisonous impact on their colleagues and societies as a whole. This year alone, at least 70 journalists have been killed in the line of duty.

We cannot allow this situation to go on – this is our message today. This day provides a strategic opportunity to all stakeholders to focus public attention on the importance of ending impunity for crimes against journalists. It opens up new possibilities to draw in constituencies whose primary interests may be other than the safety of journalists, and to interact with all those who work in the rule of law system.

First, we must stand up to violent extremists, to their hate propaganda, which disseminates messages of violence against journalists, freedom of expression.

Even in the most difficult conflict situations, we cannot allow impunity to stand – we must insist on justice being done, and this means developing also new counter-narratives of shared values and human rights.

Second, we must do more to ensure that Governments can and do take justice forward -- strengthening legislation, crafting regulations, building capacity.

This means also to reinforce judicial mechanism at national and regional level. It means also to keep sharing good practices between different human rights courts and raise awareness about these mechanisms among actors and stakeholders.

Half of all journalists' killings have happened in peacetime – in 95% of the cases against local journalists, highlighting corruption and abuse.

Every time the perpetrator of a crime is allowed to escape punishment, this nourishes a vicious cycle of violence that is poisonous to all society, undermining human rights and dignity, weakening the rule of law.

Third, we must strengthen safety policies -- in both conflicts and peacetime.

This places a premium on more effective training and mechanisms for police forces and judiciary to conduct investigations on attacks on journalists and in particular on crimes of journalists, which is the absolute form of censorship.

Lastly, we must all speak out every time a crime is committed and call for justice. This is UNESCO's mandate, to defend press freedom, to publicly condemn all killings of journalists, media workers, and social media producers of news, who die in the line of duty.

In every case, the Director General of UNESCO urges the authorities to conduct swift and thorough investigations.

To move on all fronts, UNESCO is spearheading the United Nations Plan of Action on the Safety of Journalists and the Issue of Impunity – this is the first mechanism to join the efforts of UN agencies, Governments, civil society, academia and the media.

Governments must develop better laws and mechanisms to enforce them. News organizations need to operate effective safety policies.

Journalists should be more proactive in protecting themselves, online and in the physical world, and should also better take into account the risk of psychological traumas, which can have a devastating effect.

Similar messages are carried forward in events on the 2nd of November, in Paris, with the Director General of UNESCO, Ms Irina Bokova, and in New York, London, Pakistan, the Netherlands, Ghana, Liberia, Tunisia, South Sudan, Nigeria and Nepal and other countries. These events aim to foster ending impunity for crimes against journalists.

As UNESCO celebrates its 70th anniversary, our founding mandate to promote “the free flow of ideas by word and image” has never been so important, to advance the right to freedom of expression and to promote peace and sustainable development through media freedom, pluralism, independence and journalists’ safety.

The global communication and information environment has been transformed by the spread of digital technologies. Today, more than three billion women and men worldwide use the internet, and more than six billion have access to mobile phones.

These technologies have expanded the possibilities for progress towards sustainable knowledge societies, while also raising new challenges.

Also, the 2nd of November is the occasion on launching the second World Trends in Freedom of Expression and Media Development, a publication by UNESCO that gives depth, with a focus on trends in four specific areas: online hate speech, protection of journalism sources in the digital age, the role of internet intermediaries in fostering freedom online, and the safety of journalists.

These are part of the ecology in which journalism can make its unique contribution, in conditions of safety, to the achievement of the new 2030 Agenda.

In closing, Sylvie Coudrey wanted to thank all of the speakers and moderators, and especially the active participation of the main partner: Inter-American Court of Human Rights and Special Rapporteur for Freedom of Expression, Inter-American Commission on Human Rights of Organization of American States. She also wanted to thank the participation of African court on human and people’s right and the contribution of all other partner organizations which joined their efforts to make this event a success. This is an important event and look forward to the discussion.

3.6 Daniela Pastrana Independent Journalist, Periodistas de a Pie, Mexico



Daniela Pastrana is a Mexican independent journalist specialized in human rights, citizen movements and social politics. She represents “Periodistas de pie a pie” since 2011, besides she serves as executive secretary. “Periodistas de pie a pie” an organization of journalists in Mexico aimed at strengthening the exercise of the profession through capacity building and the exchange of knowledge, being always the subject matter freedom of expression.

Ms. Pastrana has worked in the Mexican newspapers “Reforma”, “La Jornada” and “El Centro”, and she is a professor at “Carlos Septién García” School of Journalism.

The goal of her presentation was to describe the circumstances in which journalists exercise their profession in Mexico. The facts she presented speak for themselves: a third of the assassinations of journalists in the world have happened in Mexico. 7 out of the reported 19 were perpetrated in this country. Out of this 7, 5 came out from the state of Veracruz. The crudeness of this statistics does not seem to fit in a resourceful country that has solid systems of protection.

Murder is not the only expression of terror journalists have to face, they also face enforced disappearances. To date, 18 missing journalists have been officially reported, and there are many others that are not reported because of fear. These modalities were infamously popular during the government of Felipe Calderon. Now, under the government of Enrique Peña Nieto these new modalities have been added to the list: attacks on journalists that are reporting demonstrations, social mobilizations or human right violations. One statistic stands out in this regards: in 53% of the cases, the perpetrators are State offices, and only in 14% of the cases the perpetrators are members of criminal groups. Criminal groups have infected the structures of the state so badly that is hard to tell who is attacking and where such attacks come from. Diverse factors help to understand the situation in Mexico.

One of the factors is the national security strategy deployed in 2007 who brought a war within Mexican soil in which journalists were the first to fall, trapped in many conflicts of interests. Being this factor contextual, the next factors refer to structural circumstances. Society do not react against impunity because thinks the media is also part of the problem (98% of the crimes remain unpunished). The relationship between media and the

power, the lack of technical ability to investigate and back up with documentary evidence cases of corruption and violation of human rights and lastly, the lack of understating regarding the role of journalism in a democratic system contribute to feeling of disenchantment mentioned above.

Ms. Pastrana documents all of this situation of vulnerability journalists have to deal with. It is a vindication by itself to openly denounce the lack of efficacy of the protection mechanisms for journalists. Some of these mechanisms were only because the international community demanded Mexico to take action. In her view, these initiatives are nothing but a simulacra that will not yield results, mainly because they overlook the essential, that impunity chronically replicates attacks against journalists.

Session 4. Case law of regional and universal human rights protection bodies

4.1 Augustino Ramadhani

President of the African Court of Human and Peoples' Rights, Arusha



Justice Augustino S.L. Ramadhani hails from the United Republic of Tanzania. He was elected Judge of the African Court on Human and Peoples' Rights in 2010 for a six year term.

He holds a Bachelor of Laws Degree from the University of East Africa (1970), a Master of Laws from the University of Dar es Salaam (1978) in International Law (the law of armed conflict) and a Bachelor of Divinity from the University of London (2004).

Immediately after obtaining his first degree Justice Ramadhani joined the Tanzania Peoples' Defence Forces. After training in the Tanzania Military Academy, he was commissioned as a Second Lieutenant and reached the rank of Brigadier General when he was voluntarily released in 1996 when Tanzania resumed multiparty democracy.

Justice Ramadhani opened his intervention by talking about the African Court on Human and Peoples' Rights. The Court was established by virtue of Article 1 of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (the Protocol). In fact, the African Charter on Human and Peoples' Rights, which is the fact the main African human rights instrument that sets out the rights and duties relating to human and peoples' rights in Africa, provides a framework within which the African Court on Human and Peoples' Rights was created.

The Protocol establishing the African Court on Human and Peoples' Rights was adopted on 9 June 1998 in Burkina Faso and came into force on 25 January 2004 after it was ratified by more than 15 countries. The Court has its permanent seat in Arusha, in the United Republic of Tanzania. The institution started working in November 2006. It was created as a complement to the African Commission, due to the advisory nature of this institution. Created less than decade ago, the court consists of 11 judges, each of them elected for a term of 6 years and may be reelected once. Judges assemble for 2-3 week sessions 4 times a year. In order for the court to have legitimacy in a state, said state has to ratify the treaty and issue a declaration. 29 out of the 54 African countries have ratified the treaty, although just 7 have issued the declaration, which represents a problem for the young court. However, President Ramadhani keeps working on gathering more support and adding more countries to the court.

There is a direct and an indirect way to apply to the court. A national of a full-member country –by virtue of ratifying the treaties and issuing the declaration- can directly apply to the court. On the other hand, a national

of a nonmember country has to take his/her application to the African Commission. Then, the Commission will address the application to the court.

Since its inception the court has received 53 cases, 24 of them have been resolved and 29 await resolution. Two of these 29 cases are related to freedom of expression, both of them set in Burkina Faso.

The first case is the Application No 013/2011 The Beneficiaries of the Late Norbert Zongo et al.v.Burkina Faso. Norbert Zongo was a Burkinabe journalist, founder and director of the newspaper L'Indépendant, who was killed December 13 1989 while he was investigating the murder of the private driver of President Blaise Compaoré's brother. The beneficiaries of the slain journalists came to the Court complaining that the Burkinabe authorities not only failed to investigate and find out who committed the murders, and hence bring them to book, but also frustrated their efforts of doing so.

After hearing the matter the Court held that the Respondent State:

Failed to take appropriate measures to guarantee respect for the rights of the slain journalists; and did not shown due diligence in seeking out, investigating, prosecuting and putting to trial the killers of Norbert Zongo and his companion.

Therefore, the Court found that the Respondent State violated the following provisions:

- Article 1 of the African Charter: "The Member States of the Organization of African Unity, parties to the present Charter shall recognize the rights, duties and freedoms enshrined in the Charter and shall undertake to adopt legislative or other measures to give effect to them".
- Article 7 of the African Charter: "Every individual shall have the right to have his cause heard ...
- Article 9 (2) of the African Charter: "Every individual shall have the right to express and disseminate his opinions within the law".
- Article 66 (2) (c) of the Revised Treaty of the ECOWAS: "To ensure respect for the rights of journalists;"

The Court ordered the following reparations to be paid within six months:

a. Moral prejudice suffered by the deceased persons':

- spouses 25 million CFA Francs to each spouse;
- children 15 million CFA Francs to each child;
- parents 10 million CFA Francs to each parent.

b. Fees owed to counsel 40 million CFA Francs.

c. Out of pocket expenses of the counsel during their stay at the seat of the Court in Arusha 3,135,405 CFA Francs.

The Respondent State was also ordered to publish once the summary of the judgment in the Official Gazette of Burkina Faso and in a widely read national daily, and to publish it in the website of the Respondent State and to retain the publication for a year and to reopen investigations with a view to seek out, prosecute and bring to

justice the murders of Norbert Zongo and his three companions.

The second case is *Lohé Issa Konaté v. Burkina Faso*. In August 2012, journalist Lohé Issa Konaté wrote two articles, for the newspaper *L'Ouragan*, in which he accused a state prosecutor of corruption. In response, the prosecutor filed a complaint against Mr. Konaté and a co-defendant for defamation, public insult, and contempt of court. Criminal charges against both defendants were also filed and damages sought.

The application was brought to the African Court by the Media Legal Defense Initiative (“MLDI”), which is a NGO dedicated to providing legal defense to independent media, journalists, and bloggers who are under threat for their publications.

The court’s final judgment was that Burkina Faso had violated its duties under Article 9 of the African Charter on Human and Peoples’ Rights, Article 19 of the International Covenant on Civil and Political Rights, and Article 66(2)(c) of ECOWAS. Accordingly, the court held that Burkina Faso must amend its domestic law to reflect that penalties for crimes of defamation are not allowed. Further, Mr. Konaté may receive reparations from Burkina Faso at a later date, after he has filed a brief on the matter.

4.2 Andris Mellakauls Former Chair of Steering Committee on Media and Information Society at Council of Europe



Andris Mellakauls is Head of the Information Space Integration Division at the Ministry of Culture in Latvia and is chair of the Council of Europe Steering Committee on Media and Information Society. He was formerly a member of the National Broadcasting Council and advisor to the Minister of Culture on media law & policy.

The safety of journalists is in his opinion the most telling indicator of the state of freedom of expression in any given country. And freedom of expression is a core indicator of the health of a democratic society. It may seem that safety for journalist in Europe it is not a problem but it is. Council of Europe Secretary General Thorbjørn Jagland's findings in his 2015 report on the State of Democracy, Human Rights and the Rule of Law in Europe make for grim reading, for example: "The safety of journalists from violence and threats, an enabling legal environment for their work and access to information held by public authorities are not satisfactorily guaranteed in almost half of member states. Even where the situation is satisfactory, a significant number are regressing and over a third of states are experiencing a deterioration in protection for journalists. [...] Among the member states with an unsatisfactory rating, the negative trend is primarily due to violence against journalists, lax or non-existent prosecution of perpetrators and widespread politically motivated imprisonments⁶."

Mass media were not regarded as a policy field in its own right in the early years of the Council of Europe. This changed in 1976 when the Committee of Ministers set up a Committee of Experts and in 1981 it became the Steering Committee on the Mass Media, later the CDMSI.

At the 4th European Ministerial Conference on Mass Media Policy that took place in Prague in 1994, the ministers adopted not only a resolution on journalistic freedoms and human rights but also a statement on violations of journalistic freedoms in which ministers were "appalled by the fact that the number of disappearances and deaths of journalists has been greater in Europe within the last thirty-six months than anywhere else in the

⁶ State of democracy, human rights and the rule of law in Europe (2015). Report by the Secretary General of the Council of Europe. p.35. <https://edoc.coe.int/en/an-overview/6455-state-of-democracy-human-rights-and-the-rule-of-law-in-europe.html>

world⁷.” Just over a year later, the Committee of Ministers adopted its first instrument dealing specifically with the safety of journalists. This was Recommendation No. 4 of 1996 on the protection of journalists in situations of conflict and tension⁸. The Appendix to the Recommendation set out 12 basic principles concerning the protection of journalists ranging from their physical safety, access, confidentiality of sources and insurance to the duty of states to investigate attacks on journalists.

In 2011 the Committee of Ministers adopted Guidelines on eradicating impunity for serious human rights violations in which it was stressed once again that “impunity must be fought as a matter of justice for the victims, as a deterrent to prevent new violations, and to uphold the rule of law and public trust in the justice system, including where there is a legacy of serious human rights violations⁹”.

Twenty years after the Prague conference, it cannot be said that the situation has greatly improved. In April 2014 the Committee of Ministers adopted a Declaration on the protection of journalism and safety of journalists and other media actors¹⁰. The declaration invited Member States, among other things, to review at least once every two years the conformity of domestic laws and practices with their positive obligations to protect journalists and other media actors from all forms of attack and to eradicate impunity. This document also included the concrete decision “to facilitate the development of an Internet-based platform drawing on information supplied by interested media freedom organisations to record and publicise possible infringements of the rights guaranteed by Article 10 of the European Convention on Human Rights.”

There quickly followed the signing of a Memorandum of Understanding on the setting-up and operation of a Freedom of Expression Platform to promote the protection of journalism and safety of journalists between the Council of Europe and four well-known NGOs - the International Federation of Journalists, Association of European Journalists, Reporters Without Borders and Article 19¹¹. The aim of the platform is “to improve the protection of journalists, better address threats and violence against media professionals and foster early warning mechanisms and response capacity within the Council of Europe.” It will “enable the Council of Europe bodies and institutions to be alerted on time, in a more systematic way and to take timely and coordinated action when necessary. It shall help the Organisation identify trends and propose adequate policy responses in the field of media freedom.”

The declaration did not only contain the decision to set up the Internet platform but the Committee of Ministers also undertook “to intensify its standard-setting and co-operation activities for the protection of journalism and the safety of journalists and other media actors as a priority and contribute expertise to other international organisations with regard to the particular competence of the Council of Europe”. This intensified standard-

7 Council of Europe. European Ministerial Conferences on Mass Media Policy: Texts Adopted. Strasbourg, 2006. p.48. Available at: [http://www.coe.int/t/dghl/standardsetting/media/doc/DH-MM\(2006\)004_en.pdf](http://www.coe.int/t/dghl/standardsetting/media/doc/DH-MM(2006)004_en.pdf)

8 Available at: <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=538831&SecMode=1&DocId=540084&Usage=2>

9 Available at: <https://wcd.coe.int/ViewDoc.jsp?id=1769177&Site=COE&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383>

10 Available at: [https://wcd.coe.int/ViewDoc.jsp?Ref=Decl\(30.04.2014\)2&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383](https://wcd.coe.int/ViewDoc.jsp?Ref=Decl(30.04.2014)2&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383)

11 Available at: <http://www.coe.int/en/web/media-freedom/home>

setting has led to a draft Committee of Ministers Recommendation on the protection of journalism and safety of journalists and other media actors. The recommendation clearly states that the protection of journalists and other media actors and combating impunity for the perpetrators of crimes against them, are pressing political priorities across the Council of Europe. Along with guidelines based on four pillars – prevention, protection, prosecution and promotion, as well as a set of principles, it recommends four action lines:

Governments of Member States should, as a matter of urgency:

- (i) Fulfill the range of their obligations, negative and positive, in letter and in spirit;
- (ii) Effectively implement, through all branches of State authorities, the Guidelines set out below;
- (iii) Review relevant domestic laws and practices and revise them, as necessary, to ensure their conformity with states' obligations under the European Convention on Human Rights;
- (iv) Promote the goals of this Recommendation at the national level and engage and cooperate with all interested parties to achieve those goals.

At this point Mr. Mellakauls highlighted an issue that has been the cause of great frustration in the committee. This is the refusal by one Member State to consider broadening the notion of journalist or journalism. To quote a statement of this Member State regarding the adoption of the final documents of the Council of Europe Conference of Ministers Responsible for the Media and Information Society that took place in Belgrade in 2013, "We believe that the documents of the Conference cannot be considered or interpreted, even in the form of recommendations, as giving any special legal status to bloggers, human rights defenders, whistle-blowers or other persons performing journalistic activities or public watchdog functions, as well as to the so-called "new media", which is merely a tool for certain individuals to exercise their right to freedom of expression¹²."

Investigations on crimes against journalists often drag on for years. At best they bring to justice the actual perpetrators, but rarely the masterminds."

But when states work together some achievements can be made. The case of the Charlie Hebdo can be one of this achievements. While Latvia had the Presidency of the Council of the European Union, in one short weekend they managed to get everyone of the 28 ministers of culture of the European Union to sign a statement condemning this outrageous attack on journalists and freedom of expression.

The big question is, if this conference will go some way towards ending impunity.

¹² Interpretative statement of the Russian Federation at the adoption of the final documents of the Council of Europe Conference of Ministers Responsible for Media and Information Society. Available at: http://www.coe.int/t/dghl/standardsetting/media/Belgrade2013/Interpretative_statement_Russia_en.pdf

4.3 Victor Manuel Rescia Member UN Human Rights Committee UNHRC



Victor Rodríguez Rescia is a Costa Rican lawyer, scholar and researcher specialized in human rights. Member of the UN Committee for Human Rights from 2013 to 2016, having the possibility of being reappointed. Former notary and international consultant. Former President of the UN Sub Committee for Human Rights. Member of the International Committee of Jurists (ICJ). President of the Inter-American Institute of Human Rights (IIDH). Senior Consultant at the Inter-American Institute of Human Rights.

The UN Committee for Human Rights consists of 18 independent experts and is in charge of the application of the International Covenant on Civil and Political Rights (ICCPR), adopted by 167 countries and in force since 1976.

Mr. Rescia opened his presentation by stating that no distinction should be made in the application of protection mechanisms aimed at safeguarding freedom of expression. Hence, individuals that are not journalists by trade may benefit from these mechanisms. This group might comprise bloggers, human right activists, civil society individuals, etc.

Measures like compulsory membership in an association for the practice of journalism are intended to control who can cover information. In addition, they violate the right to freedom of speech. Due to changes in communications and technologies, new sources of production and reception of information bring new types of communicators. Both the protection mechanisms and national and international legislations have to recognize and protect these new figures.

Freedom of expression is not only restricted by means of direct censorship, threats or murder. In many cases states limit the right using more subtle ways. Europe as a whole is regarded as the paradigm of respect of democracy and human rights. However, being the paradigm does not entail that many countries in this continent fully guarantee the exercise of this right. Belarus is one of these countries.

For example, in order to authorize a demonstration or public gathering the government demands a formal application, security and cleaning contracts, and provided that the aforementioned requisites are met, said demonstration would be held in a venue 60km away from the capital. This represents a violation of the rights to assemble and to freedom of speech.

On the work of the UN Committee for Human Rights (UNHRC), Mr. Rescia admitted that the UNHRC is far from being ambitious, actually is the other way around: UNHRC's approach is too conservative and timorous. This

organization does not strive for states to adjust their legislations in line with international legislation. However, this does not mean that states can violate fundamental rights they committed to protect.

UNHRC issues recommendations on issues discussed at length so in actuality is not saying anything new. Besides Mr. Rescia deplores the fact that the UNHRC does not apply the *lura novit curia*, Latin legal maxim expressing the principle that “the court knows the law”, used in Law to refer to the principle of procedural law whereby the judge knows which law to apply and how. Therefore, parties are not asked to comment on the legal theory upon which decisions are based.

The most significant contribution of the committee has been the publication of a general comment on freedom of expression that goes in line with the advisory opinion of the Inter-American Court of Human Rights on the matter. In said comment, the UNHRC remarks that freedom of expression cannot be suspended under some circumstances. Although is not considered to be a core right, it cannot never be suspended. There is debate in some countries such as the United Kingdom or Canada on the limits on freedom of speech and whether countries should restrict it or not for reasons of national security.

Attacks on freedom of expression perpetrated by the state are as worrisome as those perpetrated by criminals or armed groups that are not prosecuted. Equally worrisome is the persecution those who reach the committee to denounce irregularities in the access to information and freedom of speech suffer in many countries.

Asked about the debate on whether international legislations violate national sovereignties, as argued by Venezuela in the *Granier versus Venezuela* case, Mr. Rescia expressed his disagreement with the hypothesis of the debate. On that note, he stated that the adoption of international treaties is always a voluntary and discretionary decision. Many countries ratified these treaties without considering the implications and responsibilities of adopting them, and now they invoke their sovereignty to avoid complying with the recommendations and sentences of international committees and courts.

4.4 Roberto F. Caldas

Vice President of the Inter American Court of Human Rights



Vice President of the Inter American Court of Human Rights, Judge of the Inter American Court of Human Rights for the 2013-2018 term. Mr. Caldas is also an attorney, partner and chairman of the Legal-Administrative Board of the Law Office Alino & Roberto e Advogados, which only acts within causes concerning the citizenship. Advocates before the Brazilian Federal Supreme Court and Superior Courts of Justice for over twenty five years, having argued a number of leading cases. Expert in Ethics, Human and Social Rights, as well as in Constitutional and Labor Law. Member of the Institute of Brazilian Attorneys, with a seat on the Standing Committee for Labor Rights since 1993. Lecturer and regular member of national legal public examination boards, including the ones for Judges and Public Prosecutors.

In his presentation, Mr. Caldas stressed the importance of organizing forums such this one, held on the occasion of the Day to End Impunity for Crimes Against Journalists. These events are meeting point for representatives of relevant national and international organizations, where they can exchange ideas on the issue and suggest solutions. In addition, these experts can also apply the suggested solutions in the spheres in which each individual develops their professional activity. Speaking on behalf of the IACHR, Mr. Caldas wished that the debate focused on ending any type of crimes against journalists rather than discussing how to end impunity. This speaks volumes on the complexity of the problem. Solutions focus more on the consequences of the act rather than on the act itself. Realistic goals make the people realize that short-term approaches will not solve the problem. IACHR's goals are to prosecute crimes but also to prevent them. States have to accomplish the same objectives by implementing mechanisms for the prevention of lethal attacks.

Journalists and media professionals should not be the only ones whose right to freedom of expression is actively protected by institutions like UNESCO or the IACHR, human right activists and members of civil society who exercise this right with integrity and honor to expose injustices or to express their views on particular and general issues should also be protected.

The IACHR has repeatedly remarked that in order to fully exercise the right to freedom of expression people should not receive pressures or threats, let alone suffer violence of any kind. Any wrongdoing against freedom of expression not only restricts personal liberty, it restricts the liberty of the society as a whole. The number of violence against journalists are especially worrisome in America. According to data of the Inter American Convention of Human Rights at least 25 journalists have been killed in 2015. Out of the 61 reported cases in the world, almost half of them have taken place in South America. Therefore, the IACHR must make an effort to investigate more cases in order to contribute in the fight against violence.

Among the positive duties states have to comply with, three measures stand out:

- The duty to prevent.
- Protection mechanisms and special police units have to be created.
- The duty to protect.

The duty to effectively investigate, prosecute and punish crimes with the all resources available. Most of the contents and activities of this forum have focused on this last duty, as the investigation, prosecution and punishment of crimes have a deterrent and long-lasting effect on impunity and its perpetuation. In this sense, what prevents crimes is the certainty that no crime will remain unpunished rather than the duration of sentences. Attacks on journalists must always be prosecuted, regardless of how serious the attack is.

Session 5. The importance of comparative legal studies and knowledge sharing on jurisprudence

5.1 Toby Mendel

Executive Director of Center for Law and Democracy



Executive Director of Center for Law and Democracy. Prior to founding the Centre for Law and Democracy in January 2010, Toby Mendel was for over 12 years Senior Director for Law at ARTICLE 19, a human rights NGO focusing on freedom of expression and the right to information. He has provided expertise on these rights to a wide range of actors including the World Bank, various UN and other intergovernmental bodies, and numerous governments and NGOs in countries all over the world. In these various roles, he has often played a leading role in drafting legislation in the areas of the right to information and media regulation. Before joining ARTICLE 19, he worked as a senior human rights consultant with Oxfam Canada and as a human rights policy analyst at the Canadian International Development Agency (CIDA).

Toby Mendel, Director of the Center of Law and Democracy, opened his presentation by talking about the upcoming course on defamation on the Internet for lawyers and judges in Mongolia for which he had elaborated a 90-page manual. In 2000 the Special Rapporteur for Freedom of Expression submitted a report on defamation, devoting some paragraphs to the issue of “censorship by killing”. The Special Rapporteur laid out 4 ideas:

- Proper funding is key to solve the problem.
- Proper efforts have to be made to investigate and prosecute crimes against journalists.
- Great, meaningful impacts have to be made to bring prosecutors to book.
- Victims of crimes have to be compensated.

15 years have passed since this report was published and yet these 4 points still define the jurisprudence on the matter of crimes against journalists. In 2012, the Special Rapporteur for Freedom of Expression submitted another joint declaration in which the aforementioned principles were not revised or extended. Albeit some of the issues maybe be quite complex and require profound analysis and research, the real solution to the issue of violence can be outlined in a few lines. Therefore Toby Mendel asserted that the problem, from a legal standpoint, is not that complex. However, it is important to strengthen the understanding of reality through the exchange of ideas and cases, although in matter of legislation the way forward is very clear.

Complexity, however, comes when the root causes of the problem are studied, when trying to raise awareness on

the importance of freedom of expression for the development of societies and when encouraging governments to find effective solutions. To put these crime under a special category, to increase prison sentences or to eliminate the prescription of crimes are examples of legal innovations that can be implemented in this regard. On the other hand, the obligations each country has to take when it comes to deciding which measures to apply and how is also a matter of debate. As complex as this is the issue of timing, when to apply specific mechanisms of protection. It is thought that such mechanism have to be applied when there is a risk or threat to the safety of journalists, although the concept is quite vague.

In this sense, very few countries have develop protection and prosecution mechanisms. Only 6 countries in the world have created one, although others are considering implementing such mechanisms. For these mechanisms to be robust and replicable comparative and viability studies have to be carried out. Moreover, regional particularities have to be factored in.

It is also necessary to study whether the masterminds are captured or not, and which are the rates of prosecution. Mexico, for instance, has a rate of prosecution of 2%. The rate increased to 3.7% after the implementation of the protection mechanism. Despite the improvement, it seems that Mexico has a severe structural problem. Countries like Canada or USA have prosecution rates of 75% and 65%, respectively. Considering such disparity, it is vitally important to conduct studies aimed at improving the situation of countries where crimes are barely investigated and prosecuted. Furthermore, it should advisable to know the particularities of the crimes against journalists. To know why these attacks are perpetrated and who perpetrate them increases the likelihood of conducting an effective investigation. Therefore crimes referred to the violation of the right to freedom of expression have to be considered and studied as a category of its own.

In light of the above it is essential that human rights organizations and judicial bodies leave their comfort zones to look for answers and solutions, getting rid of approaches that have not yielded results.

5.2 Taís Borja Gasparian Global Freedom of Expression and Information Columbia University



She is a lawyer and holds a Master of Philosophy and Law, both from the University of São Paulo, for over 30 years she has fought for the rights of journalists.

She was Chief of Staff of the Ministry of Justice and law practices in a law firm. Now, she is part of a group of experts from the University of Columbia, in a project on justice and freedom of expression, which she developed in her presentation.

The platform Taís Borja presented at the session has the mission to seek a better understanding of the jurisdiction on freedom of expression and to create a space in which the international community, national and international institutions that work in the same area can assemble.

This website globalfreedomofexpression.columbia.edu, is website that includes a wide range of judicial decisions from various countries regarding freedom of expression. The project counts on the participation and contributions of lawyers and legal researchers, and contains various articles, links to blogs and publications. The database includes cases from more than 60 countries, they are strictly classified as quickly as possible in order to make the search easier for the user because it is standardized in categories. Contributors from the University of Columbia select these cases, and each case contains an analysis that includes summary information, facts, judicial decision, and information linking the decision with the right to freedom of expression, global perspective and reflection on the influence of the case. Official documents are also enclosed in the language the sentence was originally written.

This database is designed to allow prosecutors and judges to review cases and to compare them, instead searching the cases by themselves, which in many cases is complex task. The main objective of this set of parameters is to guarantee freedom of expression with this online tool.

The database allows prosecutors and judges to review cases in order to compare them when necessary. This is a very useful a platform that promotes case-law study, establishing parameters to safeguard freedom of expression.

Ms. Borja laid out a case that serves as an example to explain why the site is so useful. She explained the Costeja González against Google case, which was investigated by the European Court. The case was widely covered by the press and media, and many courts echoed the ruling. However, some mistook the journalistic treatment with the ruling itself.

Because of that, operators of Justice of Brazil proceeded to accept illegal requests, which serves to show the consequences of not understanding a judicial sentence. In addition, it also proves that the necessity of having a place, this is case an online site, to look up information on judicial sentences or the actual sentences.

5.3 Ana Marcia Aguiluz

Program Director for Central America and Mexico Center for Justice and International Law (CEJIL)



Lawyer graduated from the University of Costa Rica, she also holds a Master's Degree in International Law from the University for Peace. She has been legal consultant of the Faculty of Latin-American Social Sciences, FLACSO.

Currently she is the Director of the Program for Central America and Mexico of the Center of Justice and International Law, CEJIL.

Marcia Aguiluz attended the session to speak on behalf of the victims. In first instance, and before addressing other aspects, she highlighted the role that the Inter-American system has played in the defense of freedom of expression, achieving important progresses, like the modification of different national judicial systems through the sentences the court has issued.

After this acknowledgement, Mrs. Aguiluz talked about the violence-related problems that plague societies, which makes the international community realize what has been accomplished is not enough. Thus, it is convenient to stop and think about the problem.

Two phenomena coexist around violence against journalists. The first of them is that violence is only understood as fatal events, such murders. However, when discussing impunity, other types of violence have to be taken into account to, like government directed violence or the use of the criminal law to prosecute alleged crimes of defamation or repress social demonstrations. On the other hand, there is the fact that civil societies have to face these kind of de facto powers, who occasionally are more powerful than the authorities.

Considering such circumstances, the implementation of precautionary measures the Inter-American system has developed for high-risk situations is a very remarkable event. These measures are devised to protect the person, but also to protect the right. Ms. Aguiluz covered, as member of Canal 36, the 2009 Honduras coup d'état. All institutions were militarized and even the telecommunications equipment was confiscated in attempt to impede that the information were broadcasted. The precautionary measure not only protected those involved in the broadcast of the putsch, it also served to safeguard the collective right to inform and be informed.

Sometimes the precautionary measures have not been effective because they are not implemented on due

time. For this reason, it is essential to hold states accountable for failing to comply with their duties.

The current standard in this regard is that states should, by official mandate, have the responsibility of safeguarding the lives and rights of journalists. The existence of a structural environment of risk should be enough to take action, rather than waiting for direct threats, such as the plague of assassinations in the state of Veracruz. As Ms. Aguiluz admits, the mechanisms are not effective because they are not properly devised, like implementing mechanisms that only work in Mexico D.F. Political will is the most important factor when addressing the problem of violence. Jurisdiction is useless if states are not committed.

5.4 Athar Minnalah Justice, Supreme Court of Pakistan



Judge of the Islamabad High Court (IHC) since June 2014. Former spokesman for Justice Iftikhar Mohammad Chaudhry, the ex-chief justice of Pakistan. Former chief secretary of a province of Pakistan and commissioner in the civil services during the 1960s and 1970s. Nasrum Minallah was a distinguished civil servant who came from the Pashto speaking NWFP.

Judge Athar Minnalah opened his presentation by stating that the subject of the panel, -The importance of comparative legal studies and knowledge sharing on jurisprudence-was simple yet complex. In the last decades Pakistan has gone through difficult times under the rule of authoritarian governments. Mr. Minnalah, after listening to the rest of panelists disserting on the importance of the right to freedom of expression, recounted an event that exemplifies how this right is fought. The isolated Pakistani town of Swat Valley, an administrative district in the Khyber Pakhtunkhwa Province.

The once peaceful region is now under the control of the Taliban, who have imposed a regime of repression and terror. Under these circumstances, journalists would not dare to challenge the power of the Taliban. This was not the case for a 12 year-old girl that had the courage and commitment to confront them, as she could not stand that schools for girls were destroyed and the role the Taliban gave to women.

She began to report the situation and her voice resonated with such force that the Pakistani government undertook military actions in the region to free it from the Taliban. However in 2012 the Taliban attacked the at the time 15 year-old girl, who was shot in the head on her way home from school. The girl survived the attack and became the youngest-ever Nobel Prize laureate. Her name is Malala Yousafzai, a Pakistani activist for female education, known mainly for human rights advocacy for education and for women in her native Swat Valley who in 2014 was recipient of the Nobel Peace Prize.

The force of freedom of expression in this case was greater than the force of those who want to establish a regime of repression and violation of human rights. This proved that the powers that are determined to spread tyranny and terror are afraid of freedom of expression.

The article 19 of the constitution of Pakistan was revised in 2010 to extend this right. The Supreme Court of Pakistan, as well as the regional courts of the country, are highly influenced by the jurisprudence of different judiciary organizations, both local and international.

The issue of violence against journalists in Pakistan is very concerning. The extremely high number of cases point out that freedom of expression is under constant attack in Pakistan. Besides fatal crimes, journalists are threatened, kidnapped and tortured almost on a daily basis. The situation has improved a bit in the last years, as shown in the 2015 Impunity Index of the CPJ (Committee to Protect Journalists), where Pakistan ranks 9th. It ranked 8th in 2014.

The importance Pakistani authorities give to the right to freedom of expression is evidenced by the measures they have taken to address the issue. When a crime against a journalist is reported there are at least 4 commissions led by justices or judges of the High or Supreme Court that investigate the facts and prosecute the perpetrators. In 2006 an Inquiry Commission led by a High Court Judge was set up to investigate the murder of Hayatullah Khan, a Pakistani journalist who reported from Pakistan's Federally Administered Tribal Areas who wrote extensively on Al-Qaeda, Taliban and the heavy fighting among tribes in Waziristan. In 2006 an Inquiry Commission headed by a retired judge of the High Court was created to investigate the abduction and torture of investigative journalist Mr. Omar Cheema. To investigate the case of the investigative journalist Syeed Saleem Shahzad, killed in 2011, the Inquiry Commission was formed by a Senior Judge of the Supreme Court, a Chief Justice of the Federal Court and 2 inspectors of two different provinces.

These examples show the commitment of the government to take the issue seriously. After the adoption of the UN Action Plan Against Impunity, Pakistan was the first country to develop a specific investigative mechanism to prosecute these type of crimes, which are judged by a special court. This body is the Anti-Terrorist Court and is governed by the Anti-Terrorism Act. An amendment of section 6 of said act was introduced, establishing that the definition of terrorism should encompass attacks on or harassment of journalists. That raises the question of what constitutes a journalist: Malala Yousafzai, for instance, would not be protected by this law. The issue is currently being discussed at the Parliament.

Other of the organizations created to tackle the consequences of violence against journalists is the Pakistan Coalition of Media Safety (PCOMS), supported by UNESCO. Media professionals, editors, journalists, broadcasters, politicians, NGOs and members of UNESCO take part in the activities of the organization.

Due to the multifaceted nature of the issue, Pakistan is implementing solutions that include actions at the judiciary, political and social level. In addition, Pakistan has its own share of particular problems, which have to be solved through ad-hoc solutions. Justice Minallah also wanted to stress how important is that the right to freedom of expression can be exercised freely in any society. Judiciary actions are not enough to fully protect such right. To address the issue should be a priority for all the spheres of power of a country.

Session 6. Successful cases in ending impunity

6.1 Baltasar Garzón

**President, International Centre for Human Rights Promotion (CIPDH),
UNESCO Center II, Spanish Judge**



Spanish judge, who led the investigations of crimes against humanity perpetrated by Latin American and Spanish mass murderers. Given the notoriety of the cases, Mr. Garzón gained international notoriety by his decision of pressing charges against the perpetrators. The prosecution was based on the Principle of Universal Jurisdiction. He has been Member of Parliament for Madrid, Secretary of State-Government Commissioner for the National Drug Plan; Senior Fellow at the Center on Law and Security, New York University; Full Professor of King Juan Carlos I of Spain Center of New York University; External consultant for the Prosecutor of the International Criminal Court in The Hague; External consultant for the Mission to Support the Peace Process in Colombia of the OAS; member of the Committee for the Prevention of Torture of the Council of Europe, and coordinator of the International observation on the judiciary reform process in Ecuador

He has collaborated with the Argentinian government as a was advisor to the Human Rights Commission of the Chamber of Deputies and in 2012 he was appointed International Adviser of the Secretariat of Human Rights of Argentina with the rank of Under-Secretary, representing the Ministry of Justice and Human Rights the Board of Directors of the International Centre for the Promotion of Human Rights (CIPDH) of UNESCO in Argentina, holding the position of Chairman of the Board of Directors. He is also Director of the Legal Office for International Legal Cooperation and Development, SL (ILOCAD, SL) based in Madrid and president of the International Baltasar Garzón Foundation for Human Rights and Universal Jurisdiction (FIBGAR); author of 8 books and Doctor Honoris Causa by 30 universities in America and Europe.

Mr. Garzón highlighted at the beginning of the sixth panel and when the floor was opened for questions the crucial work of the press in the proper functioning of democracy and suggested specific measures to increase the protection of journalists all around the world.

He opened his presentation by quoting the words of Jorge Castaneda, Mexican politician, intellectual and commentator: “nothing like a submissive or quiet press, impassive to the murderers, nothing like corrupt and submissive journalists to strengthen the culture of impunity.” The idea of needing to have an accurate and committed journalism was repeated throughout the speech. Just as there are corrupt politicians and judges there are journalists who do not do their work to serve the public and common good but to benefit other forces

or interests.

In this regard he cited a case occurred in Spain in which the media outlets of the country, in his opinion, acted against the interests of the civil society by concealing the truth, thus serving the interests of the government.

This case of informative manipulation happened right after the attacks of Atocha bombings of 11 March 2004, a terrorist attack perpetrated by jihadists that resulted in the murder of 193 people. Despite the fact that all evidence indicated that international jihadist terrorists were behind the bombings, some Spanish media outlets were determined to blame the Basque terrorist group ETA for the attacks. This line of thought exonerated the government of the People's Party of any political responsibility, who, in 2003, supported the Invasion of Iraq. This campaign was aimed at absorbing the impact this events will have on the general elections that were going to be held shortly after. Press that serves the interests of the power is nothing but a farce that diminishes the duty of ensuring pluralism in a democracy. Being critical of the government always brings problems, these problems obviously disappear when the information is not critical of the government. However, in that case information is nothing but propaganda.

It is therefore necessary to not only ensure the free exercise of the profession but to create favorable conditions for transparency, an environment where media does not serve the interests of the few. When the profession is fully exercised it becomes a worry for the powers that be. This leads to threats and violence. Under these circumstances, it is of the utmost importance to implement judicial mechanisms that guarantee the right to freedom of expression. In this sense, it is better to be practical than romantic, the endless debates that only waste time and resources have to be set aside in favor of taking action against violence. A specific protection measure for journalists who are in zones of conflict would be the introduction of an amendment to the Article 7 of the Rome Statute and consider systematic crimes against journalists as crimes against humanity.

In this sense it is not necessary to have an internationally agreed definition of journalism, since the ultimate purpose is to prevent any violation of the right to freedom of expression. There is not an agreed definition of terrorism and yet this scourge pursued nationally and internationally.

It is in places of greater vulnerability, like armed conflict areas, where the protection of journalists is more needed. If these professionals cannot report what is happening in an armed conflict, there is the risk of spreading impunity. To prosecute crimes against journalists in the context of war often requires a strong political will. A prime example of deliberate attack on the press in armed conflict was the case that took place during the 2003 Iraq Invasion in which a US tank fired a shell against the Palestine in Baghdad on 8 April 2003, where the international press was staying. The attack took the life of Spanish cameraman José and Ukrainian journalist Taras Protsyuk, who at the time worked for the Reuters Agency. The assassination of José Couso was prosecuted by the Spanish Supreme Court invoking the Principle of Universal Jurisdiction, which allows the prosecution of certain crimes (war crimes, crimes against humanity and genocide, among others), provided that they were committed against nationals of a country that cannot provide the mechanism to solve them or lacks the will to investigate them.

In this case, three US soldiers were accused for war crimes, but the charges were dropped due to diplomatic reasons: the law of universal jurisdiction in Spain was amended in 2014, By virtue of this amendment, no

proceedings can be instituted to solve the case.

Another matter of discussion was the lack of protection journalists that develop their activity under non-conventional ways have to face. The fairly recent figure of the “whistleblower” is often under protected, as protection mechanisms are outdated and fail to meet their needs. The clash of the power of the media and the power of states in many societies is very remarkable. In this regard, Mr. Garzón deemed necessary to actively protect whistleblowers against any sort of direct retribution; he also considered that proper channels for the management of disclosed information have to be created. In addition, Mr. Garzón remarked that the social perception of what whistleblowers do. Whistleblowers are often considered traitors who break group discipline. However, they are an invaluable asset for the fight against corruption and for transparency. In this regard, it would be advisable to join efforts to create a protection tool in the cloud.

Judge Garzón is concerned about what he calls the “biodegradation of privacy”. It is a byproduct of the aforementioned clash and all the members of the society have contributed to such degradation. At this point of his presentation, Mr. Garzón stressed again that journalists need to understand what their role is and comply with their duties with the utmost, integrity and respect to the corporations they belong to.

States cannot take advantage of the situation and limit freedom of expression using the pretexts of violations of the rights to privacy and honor. Many countries that use the criminal law to silence the voices of journalists arguing that they violate the right to honor.

Lastly, Judge Garzón wanted to address the issue of how media reports judicial sentences, a point that was discussed in the debate that followed the presentation. More often than not, as the judge admits, the language used is too convoluted and complex to understand, even for the judges themselves. He recalled the time he decided to go against the grain: in 1984 a woman reached him in deep sorrow after hearing the sentence of the trial she was involved in. The court ruled in her favor, but she was in such state because she could not understand what the document stated. Mr. Garzón suggested the idea of creating spaces that systematically and comprehensibly gather sentences and jurisprudence organized by subject matter and area of interest. The rest of panelists found it very interesting and concurred with his proposal, acknowledging that this database could be a useful tool for jurists and media professionals. Newly created international organizations, like the African Court on Human and Peoples’ Rights can use this source to base their decisions.

6.2 Joao Bosco Federal Prosecutor Office, Brazil



Graduated in Law by the Federal University of Bahia, author of *Liberdades e limites na atividade de radio e televisao: Teoria geral da comunicação social na orden jurídica brasileira e no direito comparado* (2001), and *Liberdades Fundamentais e Sgurança Pública* (2006). He is member of the Public Prosecutor's Office and Regional Attorney of the Republic. He attended the panel on behalf of the Public Prosecutor's Office.

Mr. Bosco's presentation addressed the issue of violence in Brazil and how is being tackled by the authorities and civil society.

In recent years, Brazil has experienced a dramatic surge of violence. Research conducted by UNESCO show that violence has exponentially increased approximately by 550% since 1980. There are 24 violent deaths per year per 100.000 people¹³. To put this in context, the rate in the US through the 60s to the 80s –arguably US' most violent period of time in recent history– was 10.8. Nowadays the rate is 4.6 per year per 100.000 people. Obviously, the death rate includes crimes against media professionals. However, the data on violence against journalists presents some particularities. A study conducted in Brazil by the NGO Artigo 19, who is an important ally of the Brazilian judiciary power, reflects the violence human right activists and journalists suffer. From the amount of attacks on journalists, only the cases of violence by reason of the practice of the profession have been considered for the study.

The following variables were taken into account:

- Homicide
- Attempted murder
- Death threats
- Torture

The annual reports lay out the following facts:

- In 2012 there were 36 violations, 7 of them were homicides¹⁴:

¹³ http://www.unesco.org/new/pt/brasil/about-this-office/single-view/news/map_of_violence_examines_deaths_by_firearms_in_brazil_from_1980_to_2012/#.Vg_rkPIVhBc

¹⁴ http://violacoes.artigo19.org/vw/1J9gwMg_MDA_11cd0_/Relato?rio-Graves-violac?o?es-a?-liberdade-de-expressa?o.pdf

- In 2013 there were 29 violations, 4 of them were homicides¹⁵;
- In 2014 there were 21 violations, 3 of them were homicides¹⁶.

As of the present year, 4 homicides have been reported. One of them was perpetrated in the state of Ceará. Both the material authors and the masterminds were reported by the Public Prosecutor's Office and are held in custody pending trial. The other three are currently under investigation.

Generally speaking, the perpetrators of crimes are politicians of small towns and police officers. The victims of such violence are radio broadcasters and investigative journalists. These professionals put the finger on cases of irregularities, corruption and police brutality, which yield retaliatory responses from the parties concerned.

After outlining the essentials of the situation, Mr. Bosco diagnosed the generic causes of violence in an attempt to explain violence against journalists in Brazil.

The American-Canadian Psychologist Steven Pinker¹⁷ analyzed the history of violence, from prehistory to present day in his pivotal essay *The Better Angels of Our Nature: Why Violence Has Declined*. The MIT and Harvard professor argues that we are living in the most peaceful time in our species' existence. To backup such statement, Pinker considers different theories on the increase and decline of violence, concluding that social inequalities are the biggest factor. The criminologist David Kennedy¹⁸ supports this finding, as well as John Donohue and Steven Levitt, who argue that the legalization of abortion in the US, due to the *Roe v. Wade* case, prevented the birth of future delinquents. Donohue and Levitt's theory is based on a positive-sum game equation. The result of such equation indicates that peace is beneficial for all people involved¹⁹.

Taking these assumptions into account, Mr. Bosco drew some conclusions about the increase of violent crimes in Brazil and which measures should be taken to solve the problem. The lack of public policies regarding social care and repression increases violence. Although this may seem obvious, it really explains the situation in Brazil. In fact, this would also apply to other Latin American countries that are facing the same problems.

Quality of life also has an effect on violence. The lack of public policies aimed at guaranteeing proper living conditions is an indirect cause of violence. As a matter of fact, the combination of good quality of life and proper policies has brought peace, albeit relative, all over the world. However, violence still persists in some areas, in fact it has surged, like in Brazil.

Taking a closer look at the Brazilian situation, social violence has steadily grown over the years, this continuous increase reveals that the Brazilian authorities need to improve their management of the problem, as it has failed to develop effective containment measures. Impunity, arguably one of the main causes of violence,

15 http://violacoes.artigo19.org/vw/1Jg8wMg_MDA_2bdbc_/RELATORIO-GRAVES-VIOLAC-O-ES-FINAL-VER-SA-O-INTERNET.pdf

16 http://violacoes.artigo19.org/vw/1IEvAMDM_MDA_bfbd5_/a19_R_violacoes_2015_web_final.pdf

17 PINKER, Steven. *Os bons anjos da nossa natureza: Por que a violência diminuiu*, São Paulo: Companhia das Letras, 2013.

18 PINKER, Steven. *Os bons anjos da nossa natureza: Por que a violência diminuiu*, São Paulo: Companhia das Letras, 2013, p. 180

19 PINKER, Steven. *Os bons anjos da nossa natureza: Por que a violência diminuiu*, São Paulo: Companhia das Letras, 2013, p. 235/243.

thrives in an environment in which the state fails to its citizens, both directly and indirectly. In the 80s, most of the countries in Latin America were ruled by military dictatorships, although Brazil started the transition to democracy, initiating a round of talks on the elaboration of a new Constitution that will set a shift of power from the military to the civil leaders.

One of the subjects discussed in the rounds of talks was the opportunity and convenience of having an Ombudsman. The idea was rejected arguing that the executive power was strong enough not to need this authority. However, a similar agent was introduced in 1988, the Procuradoria Federal dos Direitos do Cidadão (PFDC) belonging to the Public Prosecutor's Office, institution where Mr. Bosco works. The institution has its own budget, investigative units, functional independency and legitimation to file class action complaints on environmental issues, rights of indigenous tribes, minorities and of course the defense of the fundamental rights. Therefore the body introduced in the 1988 Constitution combines the powers and responsibilities of the Ombudsman and the human rights defender. The Procurador-Geral da república (public prosecutor) has the summoning power of the judiciary and the investigative competences and objectives of the Ombudsman. The work of the attorneys have yielded positive outcomes for the Brazilian society, such as the recent developing in the LAVA-JATO operation, which resulted in the incarceration of many wealthy people, something unprecedented in a country where impunity is king. The PFDC, on the matter of the defense of human rights, has the power to act ex-officio or to represent a party involved in a proceeding.

With regard to specific initiatives aimed at fighting crimes against journalists is the creation of the Working Group on Human Rights Professionals. Several institutions related to media and the Secretariat for Human Rights met to address the issue after a blogger and reporter for the “Estado de Maranhão” was murdered in May 2012. The group held several meetings where the crimes were perpetrated²⁰. The Minister of the Secretariat participated in many of these meetings, who met with governors, legislative assemblies, syndicates and human rights NGOs. These assemblages have proven to be very effective²¹.

One of the associations that stood out was Artigo 19, NGO well represented in Brazil by Camila Marques, Julia Lima and Karina Quintanilha, among others. They undertook a movement that was supported by the Minister of the Secretariat for Human Rights. That ultimately has led the police and authorities to rethink their approach to the protection of citizens. The working group, as well as professional associations for the defense of human and the right to report are members of the PFDC. In this case and in many others, the PFDC has been able to mobilize the civil society, the police and the government and judiciary authorities to find and prosecute the material authors and masterminds of several crimes, who in turn have been punished and incarcerated.

Practically speaking, the Procuradoria teams up with state agencies, national and international organizations and representatives of civil society, persuading the government to protect and safeguard the individual, collective and diffuse rights. However, legal proceedings are undertaken when such protection is not provided.

A catalyzer of social mobilizations is public indignation. Creating an environment of indignation the civil society puts pressure on the institutions of the state, police investigate the facts, accusations are made and eventually the judiciary power issues a sentence. Without the strength of public opinion or the respect to human rights

20 http://www.onu.org.br/img/2014/03/relatorio_SDH_GT_comunicadores_11-marco-2014.pdf

21 http://www.onu.org.br/img/2014/03/relatorio_SDH_GT_comunicadores_11-marco-2014.pdf

there cannot be proper justice for journalists. Many people, including the police, cannot tell difference between the murder of a journalist and other types of murders. This does not exclusively happen in Brazil, many other countries face the same problem. Prime example are the two murders of journalists that took place in the state of Bahia earlier this year. Police said they will investigate said murders once other cases were investigated first. In situations like this, the public prosecutor has to initiate legal proceedings to investigate the case, find those responsible for the crime and prosecute them. The authority of the PFDC has proven to be an efficient tool, besides, it also proves that different jurisdictional areas can cooperate together.

In view of the aforementioned, it is safe to say that the Public Prosecutors' Office plays an important role in the defense of human rights. Particularly noteworthy are its contributions to putting an end to impunity for crimes against journalists. The Constitution of Brazil contemplates another defense mechanism that should be mentioned. In 2004 a constitutional amendment was adopted to introduce the Incidente de Deslocamento de Competência (IDC). The IDC was devised to ensure compliance with international obligations in the field of human rights in cases of severe violations of human rights. The Procuradoria-Geral da república will be able to take a case to the Supreme Federal Court at any point of the investigation or the proceeding of a case. It means that the Procuradoria can transfer jurisdictions.

6.3 Bach Avezdjanov Program Officer for Columbia Global Freedom of Expression.



Bach Avezdjanov is the Program Officer for Columbia Global Freedom of Expression. Prior to joining the initiative, he has worked in Kyrgyzstan for Freedom House, the UN Office of the High Commissioner for Human Rights, and the Tian Shan Policy Center at the American University of Central Asia. Much of his work focused on legislative reform pertaining to torture prevention. He also worked on strengthening public assembly, religious freedoms, minority rights, and women's rights.

After, Bach joined the UNHCR operation in Kassala, Sudan, a city on the border with Eritrea. In the capacity of a protection officer, he monitored refugee rights issues and designed projects to ensure that those issues are resolved.

Bach is fluent in Russian and holds a J.D. from the Boston University School of Law.

In his speech Bach Avezdjanov wanted to expose the case of Ilya Goryachev, the nationalist leader sentenced to life imprisonment for organizing a string of hate killings including the shooting of a prominent rights lawyer in broad daylight and the 25-year-old reporter at opposition newspaper Novaya Gazeta.

Ilya Goryachev worked for several politicians in the Russian Parliament, wrote stories for newspapers, was a member of a political committee for the "People's Union" party, organized a major nationalist rally in 2009, and worked as a communications director for a Russian Christian Orthodox TV channel. While doing all that, according to the Russian prosecutors, he formed in 2008 the "highly organized" and heavily armed group called the Battle Organization of Russian Nationalists, or BORN.

On January 19, 2009, BORN murdered Stanislav Merkelov and Anastasiya Baburova, as they exited a building together. Merkelov was a lawyer who rose to prominence for representing non-ethnic Russians, specifically for the case where he represented the family of a Chechen girl who was raped and killed by a high ranking officer in the Russian army. Anastasiya Baburova was a young journalist at Novaya Gazeta, an independent newspaper, whose stories concerned nationalism in Russia. BORN claimed that her murder was not planned, rather that she was at the wrong place at the wrong time.

The police soon began to suspect that the responsible parties were Nikita Tikhonov and his wife Evgeniya Khasiss; both, as later was found, belonged to BORN. In the latter half of 2009, the police interviewed Goryachev about the murders, during which he stated that Nikita Tikhonov and Evgeniya Khasiss were the murderers. Soon after, in 2010, Goryachev fled to Serbia. From there he sent a notarized letter in which he rejected the statements incriminating his BORN comrades.

The police notified Tikhonov and Khasiss about Goryachev's statements, who in turn, incriminated Goryachev, stating that he was the one who gave the orders to kill Merkelov, as well as Eduard Chuvashov, a judge from the Moscow City Court who ruled to convict several Russian nationalists.

In 2011, Tikhonov and Baburova were convicted for having belonged to an extremist group and committed several murders. The conviction and its supporting evidence was then used to build a case against Goryachev. Russia launched an international search for Goryachev and in 2013, he was arrested in an airport in Belgrade, Serbia, for violating the visa regime. He was then extradited to Russia, under the condition that Russia does not submit him to the death penalty.

Some of the charges against Goryachev were about creating an extremist organization and murder of two or more persons by a criminal group motivated by ideological or national hatred

Goryachev was found guilty on all counts, imprisoned for life and forced to pay damages in the amount of RUB 5 million as compensation for emotional harm to the family of Ilya Dzaparidze, the leader of "AntiFa," a Russian anti-fascist NGO.

Here, we have a case that successfully curbed impunity through the arrests and convictions of not just the trigger-men, but also the mastermind behind the murders.

It should be highlighted a couple things behind the success of this case:

It must be noted that Goryachev's conviction was made possible by methodologically recycling old case materials to build new ones. In our case, Tikhonov's and Khasiss's conviction.

Relying on international law enforcement instruments, extradition. Serbia did not grant Russia's request to extradite Goryachev easily. A Serbian court of first instance stated that the Russian government did not submit enough evidence to grant the request to extradite and sent the request to a higher court for additional review. The higher court then granted Russia's extradition.

Lessons learned:

1. Goryachev and BORN, as earlier noted were responsible for the murder of a judge who convicted Russian nationalists. The decision stresses that judges who rule against certain criminal elements need protection. But hopefully, this conviction will embolden judges who rule against impunity or radical elements of society.

2. The case was successful because of the sheer number of victims, the organized nature of the attacks, the ideological basis, political aspirations of Goryachev - all of which constitute a threat to national security. It may be argued that the national security prism, specifically, countering violent extremism, for once served the freedom of expression cause, while in general it is its victim.

3. Besides the criminal conviction, the court also awarded punitive damages to the family of Ilya Dzhapridze, of RUB 5 million, which is roughly \$85,000. As many of you know, cases concerning impunity often last years, if not decades, during which legal fees accrue, especially if the government has no interest in prosecuting offenders. These costs may offset the family's drive to seek and to push for successful prosecution. So by awarding high punitive damages, the court gives hope to others, that finances should not prevent the administration of justice.

Final questions/remarks:

Should the prosecutor have also charged Goryachev with hate speech? Here, we have a case where the crimes were clearly ideologically motivated to punish anti-fascist speech. Extremist or fascist speech is criminally punishable in Russia. So, why has the prosecutor decided not to bring up charges for hate speech?

Two reasons come to mind:

1. The nature of the other crimes were so serious, there was no need to add lesser charge
2. The prosecutor did not want to bring speech-related charges

Moreover, if the prosecutor charged Goryachev with extremist speech crimes, the charges would have taken the case from a purely criminal realm to the public policy realm of protecting freedom of expression and human rights. And if the prosecutor does not bring such charges, should the courts be more proactive in linking certain crimes to violations of freedom of expression, as was in the ruling of the African Court of Human Rights on the murder of Norbert Zongo, a Burkina Faso journalist, in which the court explicitly stated that attacks on journalists violate freedom of expression and information?

To conclude, Bakhtiyor Avezdjanov wished to say that new technology globalized speech, especially radical ideology. This in turn, globalized the risks associated with producing speech. And impunity now has global ramifications. To best curb this internationalization of crimes against freedom of expression, the judiciary must also become global and learn how to use international instruments and how to apply international and regional norms in their decisions, as well as to how draw lessons from judgments of other jurisdictions. One way to do that is to use various online resources, be it Columbia's Legal Database, or any other.

6.4 Mohammed Ayat Former staff at UNICTR Rwanda



Member of the Scientific Committee of the International Society of Criminology, Special Advisor to the ICC Prosecutor on Cooperation with the MENA Region, Independent Expert for the Capacity Building and Technical Cooperation for Cote d'Ivoire (nominated by the Human Rights Council), Former member of the UN Human Rights Committee, Former Senior Legal Advisor to the Prosecutor of the International Criminal Tribunal for Rwanda, Professor of Law at Mohammed V University Rabat, President of the Network for Research in International Criminal Justice, Member of the Moroccan National Human Rights Council, Attorney at the Moroccan Court of Cassation.

As a human right, the freedom of expression is an end in itself. However, it has a functional dimension. It is a tool that can be used to claim and protect the rest of human rights.

The freedom of expression is an end in itself. The ability of expressing ideas is a characteristic that distinguishes human beings from other living beings. It is a right tightly linked to the human condition. For a human being cannot help but reflect on his/her condition and the condition of his/her environment. Furthermore, as a social being he/she should be able to share his/her ideas with other fellow human beings.

The right to the freedom of expression has also a functional role. It allows to demand and protect all the remaining human rights (civil, political, economical, social cultural, the rights to solidarity).

More concretely any person should be able to openly claim that he/she hungry, sick or does not have a shelter, that millions of human beings live in dire misery while others are constantly becoming more wealthy, that a heinous discourse is rampant somewhere and will be leading to a genocide, that some politicians are corrupt, that elections were biased or to the contrary transparent and that a judicial process has been fair or unfair, etc. In fact, the right to freedom of expression is a corner stone of democracy. Its vital importance explains why the human rights instruments draw for it a very wide boundaries.

According to the famous article 19 of the International Covenant on the Civil and Political Rights (ICCPR) it is a right to be enjoyed by:

All persons, for seeking and disseminating information, through any kind of media. Nevertheless, these wide boundaries are subject to limitations.

For the right to freedom of expression, is not an absolute right (which is by the way true for most human

rights). Article 19 of the ICCPR very carefully associates specific duties and responsibilities to the freedom of expression.

Those duties and responsibilities relate to two concentric spheres: an private and a public one:

The private sphere concerns the respect of others' rights and their reputation.

Why the public sphere relates to the imperatives of national security, public order and public health.

However the signification of such expressions may might be very challenging and poses serious difficulties of interpretation.

For example, the public morality is a very relative notion. Its meaning depends on changing cultural factors. Nowadays, in some countries, homosexuals have acquired the right to openly live in couples while in other countries homosexuals are persecuted and sometimes sentenced to death in the name of public morality.

Likewise the notion of public order lacks precision and clarity. For example it is obvious that public order in a democratic state is not the same in a bloody dictatorship.

What makes matters even worse, these fuggy notions are first and foremost interpreted by each state on its territory. At the fort front of the interpretation and implementation of those norms the States happen to be both judges and parties.

National judgments that support journalists instead of bullying them are usually rare. And they are even exceptional in countries where justice lacks independence.

The concepts of public order and public morality could easily be interpreted in a broad and conservative manner and therefore can be used to stifle the freedom of expression instead of protecting it. When a journalist dares to criticize powerful public authorities in political and / or social sensitive situations, it is unusual that judges choose to be openly on his side.

After all, in many countries notably in the Civil Law system, judges are civil servants. Moreover, they usually enjoy some economic and social privileges. On the other hand the evolution of their careers might depend on the way they interact with the executive power.

Some of the judges adapt well to this condition and end up living in an ivory tower. They put themselves in the service of the dominant system even if it is corrupted. Sometimes they themselves become corrupted and therefore become part of the problem not of its possible solution.

Other judges, more likely the majority, simply do not dare to take risks for their safety (physical safety, employment, career development, etc.). Not all judges have the courage of the Spanish judge Balthazar Garzon or the Belgian judge Damien Van Dermeersch.

This apprehensions of the judges usually worsens during periods of social and political tensions. For example

of the Arab countries after the upheavals of the so-called “Arab Spring”.

In such situations, it is not only the freedom of expression which is bullied, it is the freedom, full stop. There are legions of examples where journalists have been harassed by public authorities without being protected by justice;

Cases that could be qualified as “success stories” for journalists are the exception and not the rule. Judges can be very sensitive to the red lines drawn by the executive power. The separation of powers, even enshrined in a constitution, appear to become sometimes a mere optical illusion!

One case of success was rendered in favor of a journalist who has reported a corruption case in Lebanon. The name of the defendant is Mohammed Al Maghribi. The judgment is quite recent. It was issued on November 26, 2014.

The journalist in question is also an attorney at law and as well a fervent defender of human rights. He has published on his Facebook page a piece of information regarding the corruption of a Customs Comptroller. Allegedly this senior official have let illegally enter a large batch of goods (mobile phones) to Lebanon without complying with the formalities required by law. Such behavior if proven would be generally related to corruption. Outraged by this publication, the senior official brought the matter to the judge of expedited matters. He argued that the published information harms his reputation and requested its deletion it from the website under a penalty.

The journalist / Attorney at law replied that he has the right to denounce the rampant corruption in his country. The judge rendered a judgment in support of the journalist. His reasoning is interesting in several regards. On the one hand, the judgment refers to Lebanon’s internal legal framework; which is in line with the international standards of freedom of expression.

The judgment recalls that the right to freedom of expression is enshrined in the constitution of Lebanon (art. 13). It also adds that Lebanon is a member of the United Nations that ratified the ICCPR; which protects the right to freedom of expression in article 19.

The judgment also points out the necessity of the right to freedom of expression to assert a real democratic regime: “Noting that information encourages debate.”

As it enables citizens to exercise a legitimate control over the actions of the representatives of the public authority.

The judgment also reports the negative impact of corruption on the economy and the primary role of the information in fighting the scourges of corruption:

In this regard, the judgment cites the UN Convention on the fight against corruption. The provisions of this agreement stipulate that the States must allow private entities to participate in the fight against corruption. These entities should be able to denounce corruption and unveil it to the public (art. 13 of

the Convention).

Another issue was tackled by the judgment. How to find a balance between the protection of the reputation of individuals and the right to inform the public about the misdeeds related to their public service?

The judgment recognizes the importance of protecting the reputation of individuals. However, it recalls that when a person agrees to assume a public function, the protection of public interest, in certain conditions, prevails over his right to the protection of his private life.

More precisely, reasonable critics that can be addressed on how a public agent fulfills his tasks cannot be considered abusive to the extent of harming his personal image. We can find similar reasoning notably in some judgments of the European Court of Human Rights.

Obviously, this does not mean that there should be a total discard of all safeguards.

In Mr. Ayat opinion there are two very important ones :

- The first safeguard is internal to the corporation of journalists. They must perform their duties with utmost caution and sense of public interest. They must respect a certain professional ethic.
- The second safeguard is justice; which should have the last word when ruling on the cases submitted to it. Justice is supposed to consider the specific facts of each case that can objectively tip the scales of justice on one side or another. Provided that the scales of justice are themselves not biased!

Besides the case presented Mohammed El Maghribi was targeted by several other trials seemingly aiming at intimidating and harassing him. As he dared for several times to criticize the malpractice of some public authorities in his country.

Already in 2003, a lawsuit was filed against him for giving a speech before the European Parliament in Brussels. In his expression he had denounced the torture allegedly practiced by the Lebanese authorities. Considering that such expression damaged the image of the Lebanese government, a lawsuit was filed against Al Maghribi for defamation and denigration. Fortunately, the judge of the criminal court dismissed the case and acquitted the defendant on the grounds that he was only using his right to freedom of expression.

Other criminal actions were filed against Mohamed Al Maghribi but were also all unsuccessful (and I will not get into their details in this oral presentation). However, the main idea I would like to highlight, is that the harassments against Mohammed Al Maghribi did not stop for a long period. But hopefully Lebanese judges were to live up to their responsibilities to protect his right to freedom of expression. Now, apprehensively I wonder until when they will continue to be so?

Finally Mr. Ayat wanted to acknowledge and salute the courage of journalists who defend human rights, often against all odds taking great risks for themselves and for their loved ones.

He also wanted to pay tribute to the judges, in Lebanon and anywhere else, who have the courage to support those courageous journalists.

This courage must be sought by all of us. The struggle of a strong and vigilant civil society can have a preventive impact on the intimidation of journalists who honorably exercise their profession. They may also instill more courage to judges who hesitate to effectively protect the freedom of expression.

Session 7. The importance of capacity building for judges

7.1 Guilherme Canela

Regional Adviser for Communication and Information UNESCO Montevideo



Guilherme Canela holds a B.A. on International Relations from the University of Brasília (UnB) and a Master's Degree on Political Science from the University of São Paulo (USP). He coordinates the programmatic area of the Communication and Information Sector of the UNESCO Montevideo Office. During eight years he coordinated the media and journalism research area of the News Agency for Children's Rights (ANDI).

He is currently the Secretary of Regional Committee for Latin America and the Caribbean para el Memory of the World Program.

Guilherme Canela opened his presentation by highlighting the work UNESCO and the national operators of justice are doing with regard to the situation of freedom of expression in Latin America.

It should be noted that this process, characterized by the establishment of cooperation relations, has never been seen as an imposition to the national judiciary powers, as UNESCO recognizes that independency and autonomy of these institutions. This is why the approach is collaborative rather than prescriptive.

Traditionally, multilateral only interact with the executive branch, being the diplomatic missions the main channel for dialogue. This neglects the participation of the actual justice administrators in the implementation of actions aimed at promoting the exercise and protection freedom of expression.

Once the UN Plan of Action on the Safety of Journalists and the Issue of Impunity was approved, it became pretty obvious that in order to make progress in the field of freedom of expression justice operators must be taken into account.

In this context, there have been meetings with the presidents of different Supreme Courts, from which three core ideas can be defined: first, the operators of justice violate freedom of expression, if they apply the criminal code to prosecute and incarcerate journalists. The second is that the judiciary power does not investigate enough. The concept, this one being more positive, is that Supreme Courts across Latin America have issued some interesting rulings and sentences in support of freedom of expression.

The panelist also stressed the idea the judiciary power, as guarantor of the right of the citizenship to access to information, has the obligation of being accountable to the civil society as well. Therefore, it has to make information on its activities public and available.

These conversations led to the organization of an international seminar in Brazil that would count on the participation Supreme Court of said country. All the discussions and dialogues that took place in the conference were registered in order to elaborate the first draft of what is expected to be a capacity building manual for judges in Latin America. The idea took shape in the Latin-American Summit in Santiago, which led to the celebration of two workshop of validation of strategies, one in Asunción and the other in Bogotá. The capacity building materials will be available under the system of online course, as agreed with the rapporteurs. Later on, an online course was implemented in Mexico, based on a platform developed by the University of Texas a software that would help to systematize all the content. 2000 applications were received shortly after the registration was opened. 923 people took the course, which proves that there was a real interest for this kind of initiatives.

This experience was presented to the Latin-American Summit of Judges so that this course could be implemented in other countries. After a positive response, the 6-week course will include training on the following subjects: Criminal Law against journalists, Access to information, freedom of speech and Internet and diversity and pluralism. The courses are implemented with the purpose of creating knowledge, undermine relevant research elements that are not present and share jurisprudence.

In line with these goals, the initiative developed by the University of Columbia cannot be forgotten, however the panelists raised the following question: how can be specifically useful for the judges of this region? Certainly, there should be more sentences of Latin Courts and sentences written in Spanish should be included in the database.

To conclude Mr. Canela explained why the online capacity building initiative has been so successful. Taking the data collected from an on-site workshops held in Colombia in which the people who attended it was asked to give their opinions on the course. In addition, important information for the development of the online course was also collected. The data from the survey shows the great success the first iteration of the course had in Mexico, as 83% of the people thought it was excellent.

As for the second iteration, which will start in October 26, the organization received applications from all over Latin America, which could be a great opportunity to create an inter-regional discussion forum.

To conclude, Mr. Canela wanted to remark how sustainable the project is, as the course is designed for the schools to take it as an ongoing training resource for judges.

In the medium term, UNESCO will transfer these competences, hence the commitment of the organization to involve schools from the get-go. The main goal is to build a collaborative teaching network.

7.2 José María Costa Communication Consultant at Supreme Court of Paraguay



Jose Maria Costa Ruiz graduated in Communications from the National University of Asunción, strategic communication consultant and since 1991 he holds the post of Professor of Journalism, Right to Information, New Technologies and Cultural Industries. Managing director of the Proyecto de Gobierno Electrónico y Ciudad Digital, coordinador of “Villarrica Ciudad Digital” in Paraguay in 2009.

For 16 years he worked for the newspaper “Última Hora”, first as a writer, then as columnist, later as Editor-in-Chief of the section of Politics and lastly as Editorial Secretary. Currently he serves as a consultant to the Supreme Court of Paraguay.

Mr. Costa opened his presentation by commemorating the first anniversary of the assassination of the journalist Pablo Medina and his assistant, both working as reporters for ABC Color, the most influential newspaper of Paraguay. The crime was perpetrated by members of criminal groups that operate in the border with Brazil. The crime brought a wave of awareness and even motivated a judicial investigation now carried internationally. However, this incident has not been the only significant crime in the country.

Journalist Santiago Leguimazón was killed in 1991, when Paraguay was transitioning to democracy. The crime happened in broad light, the purpose being sending a clear and threatening to the press. Mr. Costa participated in the investigation of the case, for which he met with the at the time President of the Republic, General Andrés Rodríguez, the man who managed to put an end to the dictatorship. The panelist remarked that even back then, impunity was already an issue of concern when prosecuting the perpetrators of crimes, as the leader, who, according to different international organizations, had ties with drug overlords, was not interested in collaborating.

This event would serve to foresee the trend that will come later. Mr. Costa argued that the lack of political will should not be an obstacle for taking action. However, the Paraguayan system is aware of the challenge is facing, and it is committed, as the Supreme Court of Justice, to promote interim and institutional efforts to fight impunity, considering that capacity building is a fundamental training block and that the mismatch between judicial schools have to be corrected, as they need to specifically and thoroughly study the subjects of freedom of expression, access to public information, transparency and protection of journalists.

The motto of the 2015 plenary assembly of the Latin American Judicial Summit, with Paraguay assuming the secretariat, is “Towards the consolidation of legal certainty, the culture of peace and social development”, The message the motto tries to convey is that legal protection is key to keep a democracy strong, and such is strongly linked to the prevention of impunity for crimes against journalists.

7.3 Lena White Curling Supreme Court of Costa Rica



White Curling Lena has a degree from the University of Costa Rica, currently working as Advisor to the President of the Supreme Court of Costa Rica.

Ms. White opened her presentation by stressing how important is to have free press. In her opinion, the freedom to report and to receive information is a fundamental right widely recognized by the Constitutional Court of Costa Rica. The right, however, can be bigger than that: it has the power to be an important mechanism of political control. Free, independent opinions cannot be formed if these rights are not properly safeguarded. In fact, free press can provide content for other associated rights, like the right to political participation.

Costa Rica leads Latin America in protection and promotion of human rights and freedom of expression, and ranks 16th in the world, according to the 2015 World Press Freedom Index. Such index is compiled by Reporters Without Borders, and ranks the performance of 180 countries in the fields of pluralism, independence, transparency or safety of journalists, among others. This does not mean, though, that combating attacks on journalists in Costa Rica does not pose a challenge. Progress can be made in the strengthening of the judicial system and its offices.

According to the records of the Criminal Analysis Unit of the Judicial Investigation Department of Costa Rica, 16 complaints for crimes against journalists have been filed in Costa Rica. All of these cases of violence while in the line of duty have been investigated. In this sense, the authorities are fostering a positive climate of fight against impunity.

One of the most emblematic cases was the murder in 2011 of journalist Parmenio Medina, who was shot to death. Mr. Medina repeatedly denounced irregularities in the management of the finances of a local radio station. He had previously received death threats and his house was shot on several occasions.

The judiciary power deployed a record-high amount of material and human resources to investigate the case. Costa Rica has had several relevant judgments in constitutional matters, like the sentence that banned the use of force by agents of the Ministry of Public Security against journalists and cameramen and camerawomen. Another remarkable sentence is the conviction of the General Director of the Judicial Investigation Department and the Deputy Public Prosecutor's Office Against Organized Crime for tracking phones with the purpose of identifying staff members that had served as journalistic sources for the publication of a series of stories.

The Costa Rican Court has acted pursuant to the predominant criterion reaffirmed by the jurisprudence of the Inter-American Court of Human Rights. If a conflict between freedom of expression and right to privacy is of public interest, i.e. cases of this nature involving public figures or civil servants, the former right prevails over the latter.

7.4 Vivienne J. Harris

Judge of the Supreme Court of Jamaica



Worked at the Gleaner Company as a reporter/sub-editor from 1987 to 1992 (full-time and part time).
Studied law at the University of the West Indies and the Norman Manley Law School.
Admitted to the Jamaican bar on October 22, 1992.
Private practice from 1992 to 1993.
Clerk of Courts in the Resident Magistrates' Court for the parish of Westmoreland 1993 to 1994.
Office of Director of Public Prosecutions from 1994 to 1999 (appointed Crown Counsel in 1995, Assistant Director of Public Prosecutions in 1997 and Acting Deputy Director of Public Prosecutions in 1999).
Appointed a Resident Magistrate (RM) in 1999 and Senior Resident Magistrate in 2010.
Chairman of the Rules Committee of the RM Court from 2010 to 2014.
Appointed an acting Master of the Supreme Court in 2012 and also an Acting Judge in that same year.
Appointed Judge of the Supreme Court on September 16, 2014.

Before addressing the issue of capacity building Mrs. Vivene Harris wished to quickly bring the attention about Freedom of expression is vital to a democratic society. No one can deny the critical role that is played by freedom of expression in the preservation of democracy. Jamaica, as a democratic country, recognises this. It is signatory to most, if not all, human rights conventions. In 2011 there was an amendment to the Constitution to repeal Chapter III of that legislation and make provision for a new Chapter III known as the Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act 2011 (Act 2011) (The Charter). The right to life, as well as, the right to freedom of expression and the right to seek, receive and distribute or disseminate information, opinions and ideas through any media are entrenched provisions in Charter.

The Supreme Court of Jamaica has original jurisdiction in all constitutional redress cases. The Charter also makes provision that the Supreme Court may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any provisions of the Charter. A person may approach the Court if any provisions of the Charter has been, is being or is likely to be contravened. The procedure to do so is set out in Part 56 of the Civil Procedure Rules (2002). The Access to Information Act 2004 was also promulgated to grant the public the right of access to official documents held by public authorities with certain exemptions. Also, in Jamaica there is no statute of limitation for serious crimes such as murder and rape. So, the Jamaican judiciary, while being an arm of government, is independent of the Executive and Legislature. It occupies and plays a unique role in the development, interpretation, implementation and enforcement of the Constitution and other laws of Jamaica. The judiciary is well aware of its role and responsibility as the guardian of the rights of the people of Jamaica.

Jamaica is considered one of the more tolerant countries in relation of freedom of expression. So in Jamaica they

do not have serious issues with journalists being murdered, subjected to extreme violence and harassment like in some countries we have heard about during this conference. This doesn't mean that journalists or members of the media do not face threats or harassment in my country. By way of some examples: Two journalists were threatened with death during their coverage of the Vybes Kartel (a very popular recording artiste) murder trial. There has been an ongoing issue with a current Member of Parliament and members of the media, especially female journalists. They have alleged he is rude and verbally abusive of them.

Though not related to violence and more to access to information, the Press Association of Jamaica (PAJ) has complained that the Office of the Prime Minister, has restricted their access to obtaining information from the Prime Minister and other heads of state who visit Jamaica (this issue raised after the recent visits of the US President and UK Prime Minister)

So given the critical role played by the judiciary in ensuring that the rights of the citizens are protected and upholding the Rule of Law, it is vital that its members are equipped with the understanding, skills, access to information, knowledge and training that will enable them to perform their duties effectively.

Capacity Building

In Jamaica a number of initiatives have been undertaken by the Office of the Chief Justice in conjunction with various local and international stakeholders to build the capacity of the Jamaican judiciary. These include:

- Strengthening the court administration to reduce delays

- Upgrading of the training facility, Justice Training Institute, as well as, increasing training sessions for the judiciary and other court staff

- Addressing human and technical resources that are needed to improve the performance of the courts and provide the necessary support to the judiciary.
- Upgrading the infrastructure of the courts
- Improving access to justice through legal aid.
- Increasing the awareness of the public at all levels

All of these initiatives will promote a fairer and more efficient judicial system. Capacity building naturally requires adequate allocation of scarce financial resources, and this is the significant challenge that Jamaica as a developing nation faces.

There must be the sharing of information and best practises in the area of human rights law and all laws. The judiciary must have access to training, judgments of other courts so that judges may deliver a very high quality of justice to all.

Details of some capacity building measures implemented in Jamaica

The amendment of the rules of the Supreme Court to provide for criminal case management to reduce delays. The Implementation of digital recording recording in the some court rooms at the Supreme and Resident Magistrates' courts to help to reduce delays and ensure accuracy of court records.

Passage of legislation to allow video link evidence and agreed evidence.

New building – Public Building North to accommodate the civil and commercial courts, as well as, chambers and hearing rooms for judges and masters.

However, there is still need for more courts, more chambers and other physical infrastructure to accommodate additional judges at all levels of the courts. The judiciary comes at the back end and judges can only act based on evidence placed before them. Capacity building is also required at the front end, in terms of the investigation of cases by the police and presentation of these cases by the prosecutors. Impunity will remain unabated if investigations of cases and their prosecution are poor. The quality of the investigations and prosecutions determines the outcome of these matters in terms of conviction rates.

Complex social and cultural norms also contribute to the impunity and the surge in violence against journalists, as well as, other human rights abuses. This is one of the greatest challenges we face in our world today. These norms may lead to weak judicial structures, weak states and corrupt government officials. Mrs. Harris wanted to highlight a matter brought by Maurice Tomlinson against Television Jamaica Ltd, CVM TV and the Public Broadcasting Corporation of Jamaica in which he alleges breaches of his constitutional rights under section 13(3)(C) and (D) of the Charter of Rights. The neutral citation is 2013 JMFC Full 5. It can be found on the Supreme Court of Jamaica website or you may simply “Google” it. She thinks it makes for extremely interesting reading.

She wanted to end with the following quotation taken from the Final Report of the Joint Select Committee of Parliament (Jamaica) on Constitutional and Electoral Reform dated May 31, 1999:

“In order to have respect for human rights, a culture of human rights has to be created and that can only take place when all persons are treated as being obliged to respect the constitutional provisions”.

Session 8. Presentation of the Experience of Civil Society Organizations with the Fight against Impunity for Crimes against Journalist

8.1 Sonali Samerasinghe Journalist, Lawyer and Human Rights Defender



Journalist, lawyer and Human Rights Defender. Widow of Lasantha Wickrematunge, the founding editor of the Sri Lanka Sunday Leader. He was killed after daring to take on the Sri Lankan government and army for what he called human rights abuses. Samarasinghe received the PEN/NOVIB Freedom of Expression award in 2009, was a Harvard Neiman Fellow in 2010, and most recently received the Images and Voices of Hope Award for Print and Digital Journalism in 2011

Former editor and journalist in exile. Ms. Samarasinghe's presentation was remarkably important, as she has experienced violence firsthand. After 6 years in exile due to the assassination of her husband, who was a journalist, Sonali Samarasinghe returned in January 2015 to her homeland, Sri Lanka, without fearing for her life. Ms. Samarasinghe recounted the assassination of her husband in an attempt to humanize even more the victims of these attacks. In addition, she wanted to stress the efforts national and international organizations have undertaken in the fight against impunity. Ms. Samarasinghe's husband was the editor-in-chief of a Srilankan journal. In January 8 of 2009 he was killed beaten to death by eight men related to the government on his way to work.

Freedom of press was under constant attack during the dictatorship in Sri Lanka. Journalists were harassed on a daily basis. Publications were shut down and the few remaining were taken over by the government. People like Ms. Samarasinghe's husband, who refused to accept such limitation of rights and to have their work controlled were harassed to the point of being murdered. The best way to fight impunity for these crimes is to keep a track of each one of the cases and to demand justice. The problem with the protection mechanisms devised to safeguard the rights and lives of people is that they are controlled by those who terrorize civil society.

Therefore, finding a solution turns into a complex challenge. Sri Lanka did have a solid judiciary power, but depended upon an increasingly omnipotent executive power. There was no actual separation of powers, and the everyday life was ruled by the martial law. The government took over media groups and began to create pro-government media outlets. Consequently, having access to unbiased, free information became an impossible task. Under these circumstances, the existing democratic institutions at that moment were metastasized to be

bodies at the service of the corrupt power. Therefore, trust in the system completely vanished as the dictatorship spread over the country and infected all facets of society. 19 journalists have been killed in Sri Lanka since 1992, 10 of them in the last decade, according to the Committee to Protect Journalists (CPJ). Journalists who exercise their profession in this scenario of repression and terror focus on gathering information and keeping track of all injustices and crimes in order to hold the perpetrators accountable for their actions, either in Sri Lanka or before an international tribunal. The goal is to keep the fight alive, to turn these crimes into issues of international interest, to make the international community aware of the problems the country is facing. In conclusion, it is of the utmost importance to know that behind the cold numbers and stats there are human beings who suffer. Societies have to understand that the ultimate goal of violating the rights of a journalist is to deprive the society as a whole of its rights.

Those who think that journalists are nothing but expendable should remember this poem written by Pastor Martin Niemöller:

First they came for the Socialists, and I did not speak out—
Because I was not a Socialist.
Then they came for the Trade Unionists, and I did not speak out—
Because I was not a Trade Unionist.
Then they came for the Jews, and I did not speak out—
Because I was not a Jew.
Then they came for me—and there was no one left to speak for me.

The defense systems a society has to prevent and fight injustices are worthless if journalists are repressed and attacked with impunity. This only leads to more abuses.

Only by keeping the faith and waiting for the right moment to come can justice be achieved. In Ms. Somerasinghe's case, the moment came 6 years after the assassination of her husband. The case has been reopened and is currently under revision.

8.2 Sahar Habib Ghazi Managing Editor at Global Voices



Sahar Habib Ghazi is the managing editor at Global Voices, a community-based newsroom with over 1400 volunteer writers and translators from more than 160 countries. Sahar helps her team craft editorial and social media policies to empower marginalized and misrepresented people across the world. Sahar is also on the board of Media Matters for Democracy, a media policy non-profit in Pakistan. She has worked for The New York Times, DawnNews TV, and Geo News TV in Pakistan, reporting on elections, natural disasters, militancy, human smuggling, and kidney tourism. In 2009, Sahar produced a documentary series on US-Pakistan relations called the Disposable Ally. Sahar was a Knight Journalism fellow at Stanford University in 2010-11. She lives between the San Francisco Bay Area and Pakistan.

Wali Babar, a 28-year-old TV journalist, was shot dead in Karachi while driving home from work on January 13, 2011. He reported on drugs, crime, militancy and the lethal turf war between political parties in Pakistan's largest city.

Wali is one of 109 journalists and media workers who have died in the line of duty in Pakistan since 2000, according to local media organizations that track crimes against journalists. Like Wali, many of those who died were targeted. A report from Media Matters for Democracy²², a non-government organization in Pakistan, states that 73 out of the 109 died²³ of bullet wounds that were shot at close proximity.

What a conviction looks like in Pakistan

In 15 years, of the 109 murder cases, only four have seen convictions. Pakistan's murdered journalists rarely see justice because Pakistanis rarely see justice. The court system is overburdened and weak, investigators rely heavily on witnesses they cannot protect, and the country's forensic science is in its infancy.

Wali's case was the first time the death of a Pakistani journalist led to a conviction in a Pakistani court. Three years after he was killed, six people were convicted²⁴ for playing a role in his death.

What should be seen as a success story is far from it. Over the course of Wali's murder trial -- which was expedited through the country's Anti-Terrorism Courts -- six witnesses, two police officers and a lawyer linked

²² <http://mediamatterspakistan.org/safe-nowhere-plight-of-journalists-in-pakistan-key-trends/>

²³ <http://mediamatterspakistan.org/safe-nowhere-plight-of-journalists-in-pakistan-key-fact-figures-and-trends-part-2/>

²⁴ <https://cpj.org/2014/03/in-pakistan-six-convicted-in-wali-khan-babar-murder.php>

to the case were killed. Two prosecutors were forced to flee the country.

Raza Rumi, a Pakistani blogger and TV presenter was targeted on his way home from work in 2014. He survived but his driver was killed. Speaking on Skype he explained, “I felt the bullets pass over me.” Days before Raza had discussed Pakistan’s controversial blasphemy laws on his talk show. Some factions in Pakistan believe even debating the blasphemy laws, which are often abused to target minorities, is blasphemy. Many journalists consider the blasphemy laws a reporting redline that they don’t want to cross.

Threatened journalists living in exile

Raza has been living in exile since the attempt on his life. Like Raza, sixteen Pakistani journalists²⁵ were forced to flee their country into exile since 2010, according to the Committee to Protect Journalists. Raza added, “I am terrified of what might happen if I return to Pakistan.” The police have made arrests in his case, which has been moved to Pakistan’s military courts²⁶. The prosecution’s main witness is the brother of the driver that was killed. He wasn’t on the scene, but since forensic science is weak in Pakistan, the courts and investigators rely heavily on witness testimony to get convictions.

Where do threats come from?

For reporters in Karachi, the country’s biggest city, threats could come from criminal gangs or political parties fighting turf wars or militant organizations trying to extend their reach. In the rural areas, threats could come from powerful feudal lords. In the northwestern tribal areas, journalists are wary of the military and the militant groups they are fighting like the Taliban. In Balochistan, Pakistan’s largest but poorest province, threats could come from the military, security agencies or armed groups fighting for independence.

Insufficient training and protection from media groups

Pakistan wasn’t always a deadly place for journalists. The rise in crimes against journalists²⁷ in Pakistan coincided with the rise of militancy and bombings in Pakistan following the US invasion of neighboring Afghanistan and the proliferation of independent media in the country.

In the last 14 years, Pakistan went from one omniscient state-owned TV channel in the country’s official language Urdu to dozens of independent cable news channels in multiple regional languages. In 2002, there were 2000 media workers in the country, now there are over 18,000²⁸. Many young, untrained journalists and media workers now compete to break news in a country where hundreds of terror-related attacks have taken more than 55,000 lives²⁹ since 2003.

Media Matters for Democracy (MMfD) research shows that in the last five years, “targeting of individual journalists is most likely carried out as a response to media outlets’ editorial policies.” According to their data

25 <https://cpj.org/killed/asia/pakistan/>

26 <http://www.dawn.com/news/1173586>

27 <https://cpj.org/killed/asia/pakistan/>

28 <http://www.fnpc.org/wp-content/uploads/2015/01/State-Of-Media-In-Pakistan-Key-Findings-of-2014-And-Challenges-in-2015-PDF.pdf>

29 <http://www.satp.org/satporgtp/countries/pakistan/database/casualties.htm>

the Jang Group, which owns the country's first independent news channel has had eight casualties; seven of them were targeted. Jang Group has faced a vicious most hate propaganda sparked by the channel criticizing the country's powerful and popular military. The Express Group, one of the largest news network's in the country has had eight casualties of which six were targeted, MMfD says "most likely due to their strong stance on extremism and militancy."

A MMfD report also shows that some media groups have sustained more accidental loss of life than others, which they conclude, "points towards a serious lack of field training and/or the follies of breaking news culture. Samaa TV for instance, has had 5 casualties - all of them became victims of bomb blasts - most likely in trying to be 'first on the spot'."

Recording threats

Since Wali Babar was killed there has been a concerted effort by local and international organizations working in the media policy space to identify key challenges and suggest solutions for building a roadmap to end crimes against journalists. Of the journalists that were targeted and killed, many were threatened before, but records of those threats only exist in 14 cases. The Committee for Protection of Journalists (CPJ) has been encouraging Pakistani journalists to publicize threats since 2011, which has helped in some cases. Documenting threats independently has been a major focus of civil society working in Pakistan. The Pakistan Press Foundation has the country's largest database and mapping system of crimes against journalists. Recently the Pakistan Federal Union of Journalists (PFUJ) with funds from USAID also launched a web portal where journalists can register complaint in case of threat or emergency. And MMfD is currently developing "Muhafiz"³⁰ a threat reporting tool for journalists, along with Code for Pakistan with support from UNESCO.

Mapping safety

In 2013, Pakistan was selected as one of five pilot countries to implement the UN Action Plan on Journalists³¹ Safety and Issues of Impunity. As a first step, representatives from local media policy organizations and media groups formed the Pakistan Coalition on Media Safety (PCOMS).³² For the next two years, the Pakistan-based research and advocacy organization IRADA with financial and technical assistance from UNESCO and Open Society Foundation, and through consultation with PCOMS members came up with over 150 findings and more than 300 recommendations³³ to combat impunity against journalists in Pakistan. These recommendations include introducing special prosecutors, special judicial committees, drafting bills and model laws on safety for journalists and media workers at the federal and provincial levels.

In January 2015, PCOMS arranged a broadly attended meeting to critique a draft law The Protection of Professionals

30 <http://mediamatters.pk/?p=725>

31 http://www.unesco.org/new/en/communication-and-information/resources/news-and-in-focus-articles/all-news/news/strong_call_for_a_media_safety_law_in_pakistan/#.VNPg-J3F9qJ
http://www.unesco.org/new/en/communication-and-information/resources/news-and-in-focus-articles/all-news/news/strong_call_for_a_media_safety_law_in_pakistan/#.VNPg-J3F9qJ

32 <http://www.mediasupport.org/wp-content/uploads/2013/03/Pakistan-Coalition-on-Media-Safety.doc.pdf>

33 <http://www.fnpk.org/wp-content/uploads/2015/01/State-Of-Media-In-Pakistan-Key-Findings-of-2014-And-Challenges-in-2015-PDF.pdf>

Engaged in Journalism Act 2015³⁴. CPJ's Bob Dietz who attended the meeting reported, "there were no illusions at the meeting in Islamabad that mere passage of a law would bring an immediate halt to the violence and threats. But having such legal backing could stiffen the resolve of the legal system to begin to bring to justice those in Pakistan who believe killing a journalist is a solution to addressing media coverage they don't approve of."

Defending free speech

While media policy organizations and journalists are trying to engage with politicians to draft laws for media safety in the country, it is troubling that many Pakistani politicians have a weak understanding of the significance of free speech in a democracy and the crucial role they need to play in safeguarding it. Following a brutal attack on a school in Peshawar city that killed more than 144, a parliamentary committee that oversees broadcast regulation in the country, produced a list of recommendations³⁵ for "media to combat terrorism." The list included guidelines for Pakistan's media to push the government's counter-terrorism narrative, to launch a social media offensive and for the government to follow China's use of cyber police to monitor and control opinion online. The recommendations created a media outrage earlier this year.

Prime Minister's unmet promises

In March 2014, Prime Minister Nawaz Sharif made a set of commitments³⁶ to a delegation from CPJ to improve media safety in the country. His promises included setting up a special commission and a special prosecutor's office. A day after the meeting, the prime minister publicly praised the media's role in strengthening Pakistan's democracy. But 20 months later, the government hasn't taken any concrete steps to fulfill the prime minister's promises.

34 <https://cpj.org/blog/2015/02/mission-journal-finding-a-legal-solution-to-siege-.php>

35 <http://nacomm-infobh.pk/Activities/Specialreports/SpecialReportToStrengthenMedia.pdf>

36 <https://cpj.org/blog/cpj.summary.pak.commitments.final.pdf>

8.3 Marcelo Träsel ABRAJI board of directors



Marcelo Träsel is a journalist, professor of Communications at the Federal University of Rio Grande do Sul (UFGRS in Portuguese) and holds a PhD in Social Community by the Pontifical Catholic University of Rio Grande do Sul (PUCRS in Portuguese). He has collaborated with several online magazines and journals in recent years. Mr. Träsel also serves as tax advisor to the Brazilian Association for the Investigative Journalism (ABRAJI in Portuguese). ABRAJI is studying the reinvention of the Internet through the transfiguration of the reality in academic research. In late 2014, the Director of the ABRAJI and Marcelo Träsel launched the free registration project, a public information data base on companies in Brazil developed by the Microsoft Innovation Center's Agile Accelerator at TecnoPUC in collaboration with ThoughtWorks.

As several panelists have stressed during the conferences, Brazil is one of the most dangerous countries in the World to be a journalist. Not only were 33 reporters killed since 1992, but in 22 of the confirmed cases the perpetrators got away without punishment.

Beyond homicides, which is the most horrible form of violence against freedom of expression, in the last couple years the cases of aggression and threats against Journalists in Brazil have risen steeply. Data collected by ABRAJI shows that, between may 2013 and march 2014 alone, 220 Journalists suffered aggressions during their journeys reporting on street protests. While 174 of the cases were perpetrated by State security forces, remaining ones were perpetrated by protesters themselves. In 2015 alone, we have registered 20 cases in which 44 journalists had their right exercise their profession denied by State agents or criminals.

This shows how not only the State regards the press with suspicion, but, sadly, even the very citizens whose right to freedom of expression the Journalists are trying to protect. No member of the police forces was punished for such aggressions. The only protesters prosecuted were the ones responsible for the death of video reporter Santiago Andrade, struck by fireworks launched by anarchist militants. In June, 2013, Abraji filed a complaint about police abuses against reporters in the State Department for Public Safety of São Paulo (Secretaria Estadual de Segurança Pública). The State department answered two years later, in June, 2015, as follows: "The occurrences reported by Abraji were properly investigated by the State Military Justice, after detailed examination of the facts by the State Prosecutor." Nobody was punished.

One of the directors, James Alberti, is currently under asylum in Canada, because of threats to his life by agents of civil police, sparked by his reporting on rampant corruption in that institution in the State of Paraná. The security prospects for Brazilian Journalists are bleak, when the same police forces that should investigate the crimes are the ones posing threats, or even killing reporters, as was the case of Rodrigo Neto, a journalist from

Ipatinga, Minas Gerais, murdered in 2013.

What ABRAJI has been doing to help bring the aggressors to Justice is what we know best: report on the cases. In the last couple years, we have been striving to become a clearing house for reports of violence and censorship against Journalists. We receive denounces, check information, and try to determine if the motivation for a crime was the journalistic activity of the victim. When we do manage to determine, or at least have reasonable cause to believe it was an act against freedom of expression, we release notes pressuring governments to investigate and find the perpetrators.

They found that this kind of reporting work brings credibility to our claims, and help media and civil society organizations to mobilize for demanding justice or protection for Journalists.

They would like to stress, though, that the main obstacle to bringing perpetrators to punishment in Brazil is not legislation, or observancy of international law by courts, but the ridiculous record of crime solution by the civil police. According to the Map of Violence report³⁷, police forces in Brazil do not even bother to properly investigate 90 percent of crimes. This means that, at most, 8 percent murderers end up convicted – 8 percent of an yearly average of 50.000 homicides . So impunity is not only a problem for Journalists: it is one of the most pressing issues in Brazilian society.

ABRAJI has been directing public letters to magistrates, urging for punishment of aggressors, and asking for the protection of Human Rights. Our directors have reached out to the ministers of the Supreme Court in 2013, in partnership with the Committee for the Protection of Journalists. Joaquim Barbosa has stated that the high Court is aware of, and I quote, “recent lethal violence that reporters in up-country towns are facing”. On the other hand, the very same minister Barbosa had, at the time, just told journalist Felipe Recondo, from Estado de São Paulo newspaper, to, and I quote, “go wallow in the trash”, because of his reporting on the Supreme Court.

³⁸

So, as anyone can see, interaction with the Judiciary power is not always very productive for our goals, although most judges are sensitive to protection of freedom of expression.

In 2013, in the wake of negative publicity generated by the refusal of Brazil to sign the Plan for Protection of Journalists proposed by the UN and the inclusion of Brazil among the countries dangerous for journalists in international rankings, the federal government set up the Communicators Working Group within the Secretariat for Human Rights of the Presidency of the Republic.

The goal was to discuss cases of violence against journalists in the country and prepare recommendations and proposals to combat them. Composed of civil society and government agencies, the working group lasted a year and resulted in recommendations to the three branches of government, plus the promise of creating a permanent observatory of violation of rights of journalists.

As for the fight against impunity, the main recommendation was that the federal legislature improve the Competency Shift Incident procedure, in which the Brazilian legislation enables the transfer court processes

³⁷ <http://www.mapadaviolencia.org.br/>

³⁸ <http://www.conjur.com.br/2014-set-09/jornalista-ofendido-joaquim-barbosa-dano-morais-justica>

relating to human rights violations from the local level to the federal level.

The mechanism would be advantageous in the case of violations of the right of access to information and freedom of expression because, in Brazil, there is a standard by which crimes against Journalists frequently involved local politicians or public officials, which ultimately influence the progress of investigations and prosecutions.

Currently, only the Attorney General of the Republic may request the displacement competence. One solution would be for the Council for the Defense of Human Rights could also shift competences to the federal level. The mechanism has existed since 2002 and is applicable to the violation of human rights since 2004, but until now it has only been used five times³⁹.

In 2014, reflecting the systematic violence against journalists during the coverage of the 2013 demonstrations and the World Cup, the Ministry of Justice also established a Working Group to discuss the issue. Lasting two days and attended by few journalistic entities, including ABRAJI, it resulted in at least one training on police protocols for demonstrations offered to journalists. There was a proposal for a safety manual, too.

Recently, ABRAJI has also been participating in the Commission for the Right to Communication and Freedom of Expression, an organ of the National Human Rights Commission. The creation of the commission was proposed in late September and has, among its objectives, resuming some points not achieved by GT Communicators - including the creation of the Observatory of violence. It also aims to create awareness campaigns on the right to communication. The composition has not been set, nor the work plan.

Although they do see the creation of this commission as progress, we are bemused by some of its proposals to protect Journalists. For example, the federal government offered to send threatened journalists to witness protection programs. We do not think this kind of measure is sensible, since, in the end, a protected reporter can not report anymore. The aggressors then actually meet their ends, without even having to take the risk of being convicted of murder. Sending reporters to witness protection programs would be a strong incentive for anyone willing to silence the press to pose threats against journalists.

The only solution, as far as freedom of expression is concerned, is to neutralize the expectation of impunity, not only for the hired guns, but first and foremost for the masterminds of the crimes against Journalists.

Provoked by the Brazilian Press Association (Associação Brasileira de Imprensa) in July 2015, following the proposals of the Working Groups mentioned, the Ministry of Justice offered a partnership to the ABI, to record and refer cases of threats against journalists to the Ministry. This action is supported by ABRAJI, which is helping in preliminary verification of events to be sent to Ministry of Justice.

Abraji has also worked in partnership with Article 19 and the Interstate Federation of Workers in Broadcasting Companies (FITERT) to prepare the report presented on October 23th at the Inter-American Commission on

³⁹ <http://www.migalhas.com.br/Quentes/17,MI213631,91041-Desde+que+foi+instituido+IDC+foi+suscitado+apenas+cinco+vezes+e>.

Human Rights, exposing the systematic violence against communicators in Brazil⁴⁰.

As a final note, Mr. Träsel wanted to draw attention to another obstacle to freedom of expression, to which magistrates can contribute directly.

Impunity does silence Journalists, but so does punishment. In Brazil, there are cases in which the powerful use the rule of law to silence the press. In Court, politicians, oligarchs, and even Journalists, mind you, use the penal types of injury, defamation, and slander, to impose censorship or force Journalists to not report on abuses, crimes and corruption. Recently, president Dilma Rousseff has sanctioned the “right of answer law⁴¹”, which provides media organizations with only 24 hours to contest judicial decisions forcing the cession of editorial space to claimants, and demands a collegiate decision by 3 judges to suspend the first instance decision. This would be the first law in Brazilian juridical history to impose such a demand – all other injunctions can be issued by a single magistrate.

In practice, the “right of answer law” will force media organizations, especially the ones that do not maintain a permanent team of solicitors, to run articles by any person annoyed by a news story, since the deadlines for contestation are too narrow. Already, we have received reports of a senator who refused to comment on information provided by a reporter, and threatened to use this law in case the story was published.

At the moment, ABRAJI is looking to join other organizations as *amicus curiae* in any Direct Action of Unconstitutionality (Ação Direta de Inconstitucionalidade) sent to the Brazilian Supreme Court of Justice (Supremo Tribunal Federal).

Of course, there are cases in which Journalists do hurt the honour of individuals and institutions. But the law has been consistently used in the last years to try and suppress freedom of expression. This is abhorrent. It is the our opinion that, as important as using the law to protect the lives and the work of Journalists, is NOT to use the law for censoring the press and curbing freedom of expression.

40 <http://artigo19.org/blog/entenda-por-que-o-estado-brasileiro-sera-denunciado-na-cidh/>

41 http://www.planalto.gov.br/ccivil_03/_Ato2015-2018/2015/Lei/L13188.htm.

8.4 Adriana Arce

Internacional UNESCO Centre for the Promotion of Human Rights, CIPDH, Argentina



Expert in International Cooperation and the European Union, she holds a Diploma in Human Rights. Fine Arts teacher, pedagogue and journalist. She has also served as Secretary of the Teachers' Union of Rosario (Argentina). Ms. Arce is a survivor of State terrorism, prosecutor in cases of crimes against humanity and Director of the International Center for the Promotion of Human Rights, under the auspices of UNESCO, based in Buenos Aires.

Ms. Arce introduced the people in attendance to the political and social scenario of Argentina during the first period of the dictatorship, where hundreds of journalists were threatened, kidnapped or assassinated. Editorials were burnt to ashes, the public opinion was harassed and even the government got hold of Argentina's largest paper factory, a company whose main line of business was to provide paper for written media outlets. The private stakeholder of the company was assassinated and his family tortured so that they gave up their shares in favor of the three most important newspapers in the country. Controlling the paper supply has helped these outlets to dominate the Argentinian media landscape. Rodolfo Walsh once said with regard to the atrocities the authorities were perpetrating: "journalism is either free or a farce."

The transition to neoliberalism and constitutional governments served to consolidate the power of these media outlets. Monopolistic forces posed a threat to independent voices. However, this looming scenario has started to change, prove of that has been the passing of laws aimed at actively safeguard the right to freedom of expression.

One of the legacies the defunct dictatorship left was the law on broadcast licensing. A commission composed of members of the military and the intelligence services reviewed the applications. This law was revoked and a law on audiovisual media was introduced, granting small or non-monopolistic outlets and groups, such as cooperatives and universities, access to the broadcasting spectrum.

However, as Ms. Arce points out, the problem in Argentina lies in some members of the judicial power who, despite the political will to comply with the laws, are taking precautionary measures that hinder the full application of the law. As a result of such actions, the aforementioned monopolistic still receive the highest amount of the signals. This leads to a scenario in which media outlets impose restraints to their staff, pressuring them to follow a specific editorial line and even firing them if they refuse to do it. Therefore, Ms. Arce argues

that in order to protect the right to freedom of expression the civil society has to demand more access to evidence-based information so that properly exercise its right to form and express opinions. Safeguarding this right does not only depend on capacity building. In Argentina, such necessity became evident the moment the empowered society demanded justice for the crimes committed against the Argentinian people. It is of the utmost importance that the society understands that the right to freedom of expression is not business but a fundamental human right, and taking into account the scope of this right, it has to defended as it were to right to life.

8.5 Darío Ramírez

Director of Article 19, Mexico and Central America



Darío Ramírez has experience in the areas of International law and human rights, public international law, media law and rights of journalists, rights and women. Before joining ARTICLE 19, Mr. Ramírez was Deputy General Director of the Unit for the Promotion and Defense of Human Rights at Mexico's Home Office. Prior to this, he worked for the UN High Commissioner for Refugees.

Dario holds a Bachelor Degree in International Relations and an LLM in Public International Relations from the University of Amsterdam.

Mr. Ramírez opened his presentation by analyzing analysis of the function of protection mechanisms for journalists taking the example of the Mexican experience in this regard; he reality is that despite all efforts, violence against the press in this country has increased rather than diminished in the past two years, the mere existence of the mechanism could have been used by the Government as a pretext to argue that they are already working on this, neglecting other aspects completely.

So, if we start from the idea that protection should be temporary and that in turn this temporality dictates the procurement and distribution of Justice, being these scarce, we are betting on what the lecturer defines as “placing a band-aid on a national hemorrhage”. And therefore, those who have promoted this protection mechanism have to reassess what they are looking for and why they are looking for it, given that its inefficiency is obvious, and that receiving a 2 million dollars budget from the Mexican Government, it hardly has the confidence of whom are supposed to be beneficiaries of these measures, the Mexican People. It has rather become “a publicly funded simulation instead of a sanctuary for the protection of those who feel persecuted”, as as Mr. Ramírez stated.

To argue this statement, we only need to point out a series of facts: 54 cases were seen over the last few years, of which 34 panic buttons do not work when pressed; 22 emergency numbers often receive no answer; 17 camera installations with stolen CPUs; as well as escorts and transfers, police patrols, building security and distribution of protection manuals...

Therefore, we must be cautious when talking about creating protection mechanisms, since they could become a safeguard for the State simulating that it is doing something. It doesn't mean we are advocating for the removal of the mechanism, but we need to be critical and notice what doesn't work. Mr. Ramírez lists 3 main causes: its inadequate legal nature, the technical inability of its operators, and especially, the lack of political will.

Impunity can, in addition, implicitly allow the perpetrator to commit any offense against freedom of expression. If the State does not punish, the basic principle of punishment is diluted and so is the rule of law. This is why the mechanism is necessary, or else it wouldn't be if it were already fighting impunity.

An explanatory piece of information is that in 48% of the cases registered by Article 19, the perpetrator is an agent of the State, therefore the Mexican State should be willing to investigate itself. If it is fighting impunity, it should attack the root of the problem and not only the consequences. Thus, if we are so concerned about freedom of speech, we should raise the following question: "who is concerned or who is not concerned?" as the only evidence available shows that violence in Mexico is systematic.

As a conclusion and final reflection, Mr. Ramirez asked the people in attendance the following question: in Mexico, are authorities unwilling or unable to solve the cases of violence?

8.6 Pedro Vaca

Executive Director of Foundation for Press Freedom (FLIP), Colombia



Executive Director of the Foundation for Freedom of the Press. Master of law, specialist in constitutional law and lawyer at the National University of Colombia. With experience in consulting, representation and defense of journalists in criminal and constitutional jurisdictions, and before the Inter-American Human Rights System.

Mr. Vaca has advanced knowledge in research and consulting on freedom of expression, access to justice and access to public information and judicial transparency.

Mr. Vaca opened his presentation by quoting Orlando Sierra, a Colombian journalist murdered in 2002: “violence is just the beginning of censorship, because violence is followed by fear and fear by silence.”

And from this emblematic expression two messages are drawn: the inhibition imposed on other journalists or society in general to prevent them from taking up narratives or aesthetics of those who were murdered, creating a shared fear effect, and a message of permissiveness, because the perpetrator is not getting punished and therefore is invited to do it again.

After this introduction, Mr. Vaca presented the people who attended the session the strategies and moments which the work of the Foundation for Freedom of Press has been through:

- the value of solidarity that prompted its creation, in which Gabriel García Márquez, Germán Rey, Jaime Abello, María Teresa Rounders participated, among other journalists, who pondered over how to avoid the tragedy that was being lived.
- Violence containment or protection in Colombia, that managed to reduce the number of murders of journalists, even though the threats increased, and at a high economic cost (15 journalists are under protection in Colombia, with an overall cost of USD 7 million).
- The political and social cost of attacking a journalist has to increase, because killing a journalist at the end of the 90's in Colombia did not have the same level of rejection as it does today; an example of this is the involvement of the highest authorities in levels of state a month ago caused by the murder of a journalist, an achievement gained after years of complaints by the civil society.

- When trying to knock on the doors of Justice, the result was more discouraging, when civil society calls for Justice is an important political message, but from justice we do not expect political answers, we expect legal answers.
- The fifth strategy is case litigation. Litigation assures that not only the state will have the power to convict criminals; the second thing is that there is a huge frustration over the fact that over long periods of time the report remained on a shelf. There is also a human side to it, not just for the pain violence brings, but also the pain resulting of not getting justice the pain as a result of not getting justice.
- There are alternatives that require a lot of effort but the fight against impunity does not exclusively rely in the actions of the judicial system; we have taken too long to understand that attention to the violence committed against the press has to be integral. The UN has an enormous challenge ahead of it, then it is important that the judicial systems have to implement progress and monitoring indicators

Prevent and Punish: In search of solutions to fight violence against journalist.

Eduardo Bertoni⁴²

This paper serves as an overview of the global pattern of crimes committed against media workers, the impunity connected with such acts, and the steps both the international community and individual states have taken to confront the situation. The first chapter introduces the magnitude of the trend of violence journalists face, the impunity for said crimes, and its impact on freedom of expression and democracy. This overview draws on the statistics of non-governmental organizations and other international bodies to demonstrate the global nature of the problem. The second chapter explains the methods of international organs— such as the United Nations, the organization of American States, the African Commission on Human and Peoples' Rights and the Organization for Security and Cooperation in Europe— have employed to combat such impunity. Declarations, resolutions, plans of actions and judicial opinions from international courts all inform this capsulation. The third chapter describes the programs countries have implemented to confront the issue, specifically within Latin America. Such innovations include the creation of special prosecutors, the federalization of crimes against journalists, and protection programs. The paper includes a discussion of the challenges the justice system faces in investigating and prosecuting these crimes, while acknowledging that impunity in Latin America is a scourge across all types of criminal activity. At the same time, the paper makes the case as to why attacks on journalists merit particular attention from the criminal justice system.

1.- Violence Against the Press, and Impunity: the Scope of the Problem

Violence against the press, whether in the form of harassment, threats, kidnappings, illegal detainment, physical attacks, or murder, is an assault not only on civilians, but on the very dispersion of information and thus on liberty and democracy. Of the numerous types of aggression journalists face across the world, all can effectively stunt freedom of expression. For the sake of breadth, this chapter focuses solely on the killing of journalists and corresponding impunity rates.⁴³

42 Prof. Eduardo Bertoni (Phd) currently teaches at Palermo University School of Law, Argentina and is a Global Clinical Professor at New York University (NYU) School of Law. He is also the Director of the Center for Studies on Freedom of Expression and Access to Information (CELE) at Palermo University. He was the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights at the Organization of American States (2002-2005). Teaching Fellow at the Human Rights Institute at Columbia University School of Law (2001). Reagan-Fascell Democracy Fellow (2012-13) at the National Endowment for Democracy (NED). Nora Bosworth, Elise Bromberg and Kristina Fridman all contributed to the research for this paper. Ms. Bosworth and Ms. Bromberg are J.D. candidates at NYU School of Law and Ms. Fridman is a J.D. candidate at Columbia Law School. All three worked as interns for the Center for Studies on Freedom of Expression and Access to Information (CELE), in Buenos Aires, Argentina, for the summer of 2015.

43 The definition of "journalist" does not have a broad consensus. However, UNESCO's inter-governmental council for the International Programme for the Development of Communication has agreed at its 28th session in March 2012, that the term covers not only journalists narrowly conceived, but also media workers and social media producers who generate a significant amount of public interest journalism. This is also echoed in the 2013-2-14 Implementation Strategy of the UN

With the fatal assault on Charlie Hebdo at the start of 2015, and the persistent sprouting of new statistics each year, it is evident that the oppressive violence against journalists is not dissipating. The UNESCO Director-General's 2014 Report records 593 killings of journalists between 1 January 2006 and 31 December 2013. From the limited information received from UNESCO Member States about these killings, only 39 of out of the 593 cases were advised as being resolved, representing less than 7 percent of total cases.⁴⁴

According to figures from the Committee to Protect Journalists (CPJ), 1,139 journalists have been killed since 1992 worldwide.⁴⁵ The impunity associated with this epidemic of violence both perpetuates and strengthens this mode of oppression as perpetrators react to the reality that such actions will, more often than not, bring no legal consequences. Of the 1,139 journalists killed since 1992, 756 were confirmed murdered.⁴⁶ Murder here is defined as "a deliberate attack against a specific journalist in relation to the victim's work."⁴⁷ 660 of these cases were never investigated.⁴⁸

An important issue that might be taken into account is that there is difficult to reach consensus on figures like the ones mentioned above. For that reason, quantitative information and trends provided by inter-governmental organizations or statistics provided by Courts are more than welcome. For example, reports like the ones mentioned below published by UNESCO are important sources for the implementation of public policies in this field.

1.a- Patterns Within the Crisis: Geographic and Professional

This pattern of killings and lack of convictions is not relegated to a set of countries, nor to specific years. Instead, the records show that while the numbers ebb and flow annually, the problem has persisted across the globe for the last several decades. To provide a sample of the range of the issue: in 1992 there were 66 confirmed murders worldwide with Algeria taking the lead as the country with the most fatalities.⁴⁹ In 96% of those 66 cases, there were no convictions whatsoever. In 2004, 61 cases were confirmed, with 69% of

Plan of Action on the Safety of Journalists and the Issue of Impunity. For this paper we also consider that journalists are "the eyes and voices of civil society" and the "vigilant watchdogs of civil liberties" who help to keep the public informed and the authorities and institutions that purport to work in the public interest in check." See, Human Rights Council, Twenty-Seventh session, document A/HRC/27/35.

44 The Safety of Journalists and the Danger of Impunity. Report by the Director-General to the Intergovernmental Council of the IPDC (twenty ninth session). http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CI/CI/pdf/IPDC/ipdc_29_council_safety_report_rev2.pdf

45 Committee to Protect Journalists (CPJ) (2015); "1139 Journalists Killed since 1992," available at <https://cpj.org/killed/>.

46 CPJ (2015); "756 Journalists Murdered since 1992," available at <https://www.cpj.org/killed/murdered.php>.

47 CPJ (2015); "Methodology," available at <https://www.cpj.org/reports/2013/05/impunity-index-getting-away-with-murder.php#table>.

48 CPJ (2015); "660 Journalists Killed with Complete Impunity since 1992," available at <https://www.cpj.org/killed/impunity.php>.

49 CPJ; "66 Journalists Killed in 1994/Motive Confirmed," available at <https://www.cpj.org/killed/1994/>.

deaths resulting in no convictions⁵⁰. That year, Iraq was the worst affected country. In 2014, the same amount of murders were recorded (61), but by then impunity rates had risen to 96% of cases with Syria holding the worst record.⁵¹ Such numbers show that both the trend of violence against journalists and the lack of convictions is as real today as it was in 1992.

Yet despite the universality of the problem, there are recurrent main players in the nexus of affected countries; certain nations repeatedly appear as hotbeds for violence against journalists where the aggressors go untried and unpunished. Iraq, notably, has far surpassed other nations in both the number of murders and lack of convictions. In fact, the Arab region in general has the most prevalent attacks against journalists, followed by Asia, then Latin America, and then Europe and North America.⁵² Below is a list of the 20 deadliest countries from 1992 to 2015.

Killings in 20 Deadliest Countries, 1992-2015	Confirmed Murders, 1992-2015	Corresponding Impunity, 1992-2015
Iraq: 167	104	103
Syria: 84	11	11
Phillipines: 77	75	75
Algeria: 60	58	58
Somalia: 57	40	39
Pakistan: 56	32	30
Russia: 56	36	32
Colombia: 46	42	36
India: 35	22	22
Mexico: 34	31	28
Brazil: 33	31	22
Afghanistan: 27	12	8
Turkey: 20	18	14
Sri Lanka: 19	10	10
Bosnia: 19	4	4
Bangladesh: 18	17	14
Rwanda: 17	17	15
Tajikistan: 17	14	14
Sierra Leone: 16	9	9

The contexts above differ, and there are a range of reasons for particular attacks and a range of remedies,

50 CPJ; “61 Journalists Killed in 2004/Motive Confirmed,” available at <https://www.cpj.org/killed/2004/>.

51 CPJ; “61 Journalists Killed in 2014/Motive Confirmed,” available at <https://www.cpj.org/killed/2014/>.

52 UNESCO (2013); “Executive Summary,” available at http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CI/images/Executive-summary_DG_General-Report_IPDC-2014_EN.pdf.

depending on the particularities at hand. A war situation is particularly complex, with documentation being important so that there can be at least an opportunity for justice for journalists once peace returns. In other cases, the problems of killings and impunity are related to low capacity on the part of a state to protect journalists and punish attackers. In yet further instances, political actors are not adequately sensitized to the human rights issues, the wider relevance of attacks on journalists, or the political calculus in terms of the image of the authorities and the country at large. These varying situations point to different emphases in terms of responses. However, in all cases, the issue of impunity for attacks on journalists serves as a barometer for the ability of a state to protect citizens and uphold the rule of law more broadly.

The trends are not only geographically influenced, but also professionally. The majority of the attacks have occurred in the more traditional sectors of the press. In 2014, 36.7% of journalists killed worked in television, while 22.94% worked in print.⁵³ The rest were distributed between radio, the internet, and photojournalism. From 2006 to 2013, 41% of journalists killed worked in print media, 26% worked in television, and 21% in radio⁵⁴. Almost all (94%) of these journalists worked local circuits and were male.⁵⁵

Female journalists, however, frequently face other forms of persecution, such as harassment, threats, and rape.⁵⁶ A 2013 study of 1,000 women working in media found that about 66% had experienced some sort of intimidation throughout their career.⁵⁷ The historic and current impunity for journalists and media workers results in self-censorship, and violates not just hundreds of people's safety, but freedom of expression for everyone.

1.b- The Most Extreme Form of Censorship: Violence Against the Press as an Attack on Democracy

Simply put, violence against members of the press is an attack on freedom of expression, which in turn is an attack on democracy and human rights. International organizations have long recognized that an attack on the press is an assault on fundamental principles of democracy, namely "transparency, accountability, as well as the right to hold opinions and to participate in public debates."⁵⁸ Assaults against media workers suppress one's right to access and attain information as well as to express and share ideas. Impunity for these crimes enhances this suppression of rights as there is little disincentive for committing such acts and thus the violent cycle is perpetuated. As the Inter-American Court emphasized,

53 Doha Centre for Media Freedom (2 November 2014); "3rd Annual Report Combating Impunity," Qatar, available at http://www.dc4mf.org/sites/default/files/doha_media_freedom_2014_ar_final.pdf: 26.

54 UNESCO (2013).

55 UNESCO (2013).

56 International Women's Media Foundation (2014); "Violence and Harassment against Women in the News Media: A Global Picture," Washington, DC, available at <http://www.iwmf.org/executive-summary/>.

57 IWMF (2014).

58 UN Human Rights Council (4 June 2012); "Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, A/HRC/20/17, available at: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-17_en.pdf: 10, Para. 54.

“Freedom of expression is a cornerstone upon which the very existence of a democratic society rests. It is indispensable for the formation of public opinion. It is also a condition sine qua non for the development of political parties, trade unions, scientific and cultural societies and, in general, those who wish to influence the public. It represents, in short, the means that enable the community, when exercising its options, to be sufficiently informed. Consequently, it can be said that a society that is not well informed is not a society that is truly free.”⁵⁹

Similarly, the Inter-American Democratic Charter listed freedom of expression and of the press as “essential components of the exercise of democracy.”⁶⁰ International organizations, human rights declarations, and non-governmental organizations have recognized the affliction of violence perpetrated globally against the press and the impunity that shelters and fosters the attacks. The following chapter will look at the reactions of these organs to counter this trend.

As has been motivated in several documents, attacks and impunity in the cases of journalists is an important issue for both democracy and development. For example, as a UNESCO publication puts it: “The fight to prevent violence and crime, and to promote the rule of law, is relevant to every citizen. However, because of the visibility of the media, it becomes a prominent public issue when journalists become victims of intimidation or violence, and when impunity reigns – meaning that the perpetrators are not brought to justice. The lack of application of the rule of law to attacks on journalists becomes an emblem of how the rule of law deals with crime and violations of human rights more broadly. When the killers of journalists act with impunity, the signal that goes out is that murderers at large can proceed without fear of consequences.”⁶¹

It is for these reasons that, while impunity is a much wider problem than the cases of journalists, there is a strong rationale to give special attention to resolving these attacks as a lever to promoting justice more broadly. It is vital to signal to the public that the state will act to ensure that freedom of expression can be used without fear, and that violent crimes in general will be properly investigated, prosecuted and punished.

2.- Intergovernmental Organizations’ Responses to Impunity for Crimes Against Journalists.

The ongoing problem of impunity in many regions of the world has compelled responses from a number of international tribunals and intergovernmental organizations. These include various bodies of the United Nations, the Organization of American States (OAS), the Organization for Security and Co-operation in Europe (OSCE), the Council of Europe, the European Union and the African Commission on Human and Peoples’ Rights. This chapter will identify major resolutions, declarations, and recommendations on the subject of impunity for

59 I/A Court H.R. (13 November 1985); “Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism,” Arts. 13 and 29 American Convention on Human Rights, Advisory Opinion OC-5/85: Series A No. 5. para. 70.

60 Organization of American States (OAS) (11 September 2001); “Inter-American Democratic Charter,” San Jose, Costa Rica, available at http://www.oas.org/charter/docs/resolution1_en_p4.htm.

61 Media in Support of Sustainable Development and A Culture of Peace. http://www.unesco.org/new/en/media-services/single-view/news/insights_endure_from_the_bali_global_media_forum/#.VcC6nvnjLCY

crimes against journalists in an effort to highlight common themes and potential solutions.⁶²

2.a- The United Nations and its Agencies

i.) UNESCO

UNESCO is the United Nations agency charged - among other goals - with promoting freedom of expression and coordinating efforts among other UN bodies, member states, and civil society actors to safeguard this right. It has spearheaded a number of international efforts to combat impunity for crimes against members of the media.

In 1993, on the recommendation of the UNESCO General Conference, the UN General Assembly designated May 3 as World Press Freedom Day. Since 1997, UNESCO has awarded a World Press Freedom Prize on this day to a “person, organization, or institution that has made an outstanding contribution to the defense and/or promotion of press freedom anywhere in the world, especially when this has been achieved in the face of danger.”⁶³ The prize honors Guillermo Cano Isaza, a Colombian journalist assassinated in 1986. UNESCO also holds conferences on World Press Freedom Day, resulting in a number of important declarations that address journalist safety. These include the Belgrade Declaration on Support to Media in Conflict Areas and Countries in Transition,⁶⁴ the Medellin Declaration on Securing the Safety of Journalists and Combating Impunity,⁶⁵ the Carthage Declaration, which stresses the importance of a “free and safe environment” for media workers,⁶⁶ the San José Declaration, entitled Safe to Speak: Securing Freedom of Expression in all Media,⁶⁷ the Paris

62 The impact of these kind of documents is very important for the work of the local Courts. For example, in the Americas there are a lot of examples of decisions taken by domestic tribunals citing or following the recommendations or sentences coming either from the IACHR or from the IACourtHR. See for example the report of the Office of the Special Rapporteur “NATIONAL JURISPRUDENCE ON FREEDOM OF EXPRESSION AND ACCESS TO INFORMATION” available at <http://www.oas.org/en/iachr/expression/docs/publications/2013%2005%2020%20NATIONAL%20JURISPRUDENCE%20ON%20FREEDOM%20OF%20EXPRESSION.pdf>; or the publications of the Inter American Court “Dialogo Jurisprudencial” last volume available at <http://www.corteidh.or.cr/sitios/libros/todos/docs/dialogo10.pdf>

63 UNESCO; “About World Press Freedom Prize,” available at: <http://www.unesco.org/new/en/communication-and-information/freedom-of-expression/press-freedom/unesco-world-press-freedom-prize/about-world-press-freedom-prize/>.

64 UNESCO (3 May 2004); “Belgrade Declaration – Support to Media in Violent Conflict and in Countries in Transition,” available at: <http://www.unesco.org/new/en/unesco/events/prizes-and-celebrations/celebrations/international-days/world-press-freedom-day/previous-celebrations/worldpress-freedomday2009000000/belgrade-declaration/>.

65 UNESCO (4 May 2007); “Medellin Declaration – Securing the Safety of Journalists and Combating Impunity,” available at: <http://www.unesco.org/new/en/unesco/events/prizes-and-celebrations/celebrations/international-days/world-press-freedom-day/previous-celebrations/worldpressfreedom-day2009000/medellin-declaration/>.

66 UNESCO (3 May 2012); “The Carthage Declaration,” available at: http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CI/CI/pdf/WPFD/carthage_declaration_2012_en.pdf.

67 UNESCO (4 May 2013); “San Jose Declaration – Safe to Speak: Securing Freedom of Expression in all Media,” available at: <http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CI/CI/pdf/WPFD/WPFD-San-Jose-Declaration-2013-en.pdf>.

Declaration on the Post-2015 Development Agenda, which encourages the international community to consider journalist safety when developing aid programs,⁶⁸ and, most recently, the Riga Declaration of 2015, entitled Let Journalism Thrive! Towards Better Reporting, Gender Equality, and Media Safety in the Digital Age.⁶⁹

Resolution 29 of the 29th UNESCO General Conference, adopted in 1997, asked the Director-General of the agency to publicly condemn violence against journalists as “a crime against society, since this curtails freedom of expression and, as a consequence, the other rights and freedoms set forth in international human rights instruments.”⁷⁰ The resolution also called for member states to implement a number of policies such as removing the statute of limitations for crimes intended to suppress freedom of expression, revising legislation to facilitate the prosecution and sentencing of individuals who orchestrate these crimes, and ensuring that such prosecution takes place in civil courts.⁷¹ UNESCO Resolution 53, adopted by the General Conference in 2011, called on UNESCO and other organizations to monitor violence against journalists and cases of impunity and encouraged cooperation and dialogue between member state governments, institutions, and civil society organizations.⁷²

UNESCO has undertaken several other initiatives to address the problem of impunity for crimes against the media. As part of its International Programme for the Development of Communication (IPDC), the Director-General of UNESCO has presented a Report on the Safety of Journalists and the Danger of Impunity every two years since 2008.⁷³ In alternate years, the UNESCO World Trends in Freedom of Expression and Media Development, provides an analysis of press freedom, safety and impunity.⁷⁴

The agency also began contributing to the Universal Periodic Review process in 2011, incorporating the issue of journalist safety and media freedom into the Human Rights Council’s country assessments.⁷⁵ It has recently developed Journalists’ Safety Indicators to track changes in and facilitate analysis of media safety worldwide,⁷⁶

68 UNESCO (6 May 2014); “Paris Declaration – Post-2015 Agenda: The right of access to information, independent media, and safety for exercising freedom of expression, are essential to development,” available at: http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CI/CI/images/WPFD/2014/wpfd_2014_statement_final.pdf.

69 UNESCO (4 May 2015); “Riga Declaration,” available at: http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CI/CI/pdf/WPFD/riga_declaration_en.pdf.

70 UNESCO (12 November 1997); “Resolution 29 ‘Condemnation of violence against journalists,’” available at: http://www.unesco.org/new/fileadmin/MULTIMEDIA/FIELD/Brussels/pdf/ipdc_resolution_29.pdf.

71 Id.

72 UNESCO (2014); “The Safety of Journalists and the Danger of Impunity – Report by the Director-General to the Intergovernmental Council of the IPDC (Twenty-Ninth Session),” CI-14/CONF.202/4 Rev2, available at: http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CI/CI/pdf/IPDC/ipdc_29_council_safety_report_rev2.pdf: 4.

73 UNESCO; “UNESCO’s Director-General Report,” available at <http://www.unesco.org/new/en/communication-and-information/freedom-of-expression/safety-of-journalists/unescos-director-general-report/>.

74 UNESCO (2014); “World Trends in Freedom of Expression and Media Development,” available at <http://unesdoc.unesco.org/images/0022/002270/227025e.pdf>.

75 UNESCO (2014); “The Safety of Journalists and the Danger of Impunity,” *supra* note 26, at 6.

76 UNESCO; “Journalists’ Safety Indicators,” available at <http://www.unesco.org/new/en/com->

and it holds safety and risk awareness trainings for journalists and other media workers.⁷⁷

Additionally, in 2008, UNESCO co-authored the Charter for the Safety of Journalists Working in War Zones or Dangerous Areas with Reporters Sans Frontières.⁷⁸ Other recently published studies addressing journalist safety include a global survey on violence against female journalists, conducted in collaboration with the International News Safety Institute and the International Women's Media Foundation.⁷⁹

Perhaps UNESCO's most significant contribution has been the United Nations Plan of Action on the Safety of Journalists and the Issue of Impunity. In 2011, the UNESCO Director-General organized a UN Inter-Agency Meeting on this topic and its conclusions were published in a comprehensive 2012 report. The Plan of Action proposes a number of mechanisms to combat impunity; these include incorporating this issue into country analyses and programming, working with member states to develop and implement relevant legislation, promoting awareness among states, policy makers, and members of the press, developing emergency response plans, coordinating regular inter-agency meetings to review national and international progress, and strengthening partnerships between the UN, other intergovernmental organizations, and civil society groups.⁸⁰ In April of 2013, UNESCO published an additional Work Plan on the Safety of Journalists and the Issue of Impunity, which outlined the agency's plans to continue its work in this area.⁸¹ The philosophy of the UN Plan is to catalyse concerted actions across the whole of society, so that each constituent, and not least those linked to the rule of law, are inspired and informed of the role they can play.

ii.) Other UN bodies and agencies

Aside from UNESCO, other bodies of the UN that have spoken to the problems of press safety and impunity include the General Assembly, the Security Council, the Human Rights Council, and the Office of the High Commissioner for Human Rights.

The General Assembly passed Resolution 68/163 on The safety of journalists and the issue of impunity in December 2013. The resolution designates Nov. 2 as International Day to End Impunity for Crimes against Journalists and urges states to ensure timely and effective investigations and prosecutions as well as appropriate remedies for victims following crimes against the media.⁸² It also calls for preventative measures to munication-and-information/freedom-of-expression/safety-of-journalists/journalists-safety-indicators/.

77 UNESCO (2012); "UN Plan of Action on the Safety of Journalists and the Issue of Impunity," CI-12/CONF.202/6, available at: http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CI/CI/pdf/official_documents/UN-Plan-on-Safety-Journalists_EN_UN-Logo.pdf: 3.

78 UNESCO (2012); "UN Plan of Action," supra note 30, at para. 1.10.

79 Barton, Alana and Hannah Storm (10 March 2014); "Violence and Harassment Against Women in the News Media: A Global Picture," available at: <http://www.iwmf.org/our-research/journalist-safety/violence-and-harassment-against-women-in-the-news-media-a-global-picture/>.

80 UNESCO (2012); "UN Plan of Action," supra note 30.

81 UNESCO (3 June 2013); "UNESCO Work Plan on the Safety of Journalists and the Issue of Impunity," CI/FEM/FOE/2013/299, available at: <http://unesdoc.unesco.org/images/0022/002223/222363E.pdf>.

82 UN General Assembly (18 December 2013); "Resolution 68/163. The safety of journalists and the issue of impunity," A/RES/68/163, available at <http://www.un.org/es/comun/docs/index.asp?sym->

create a “safe and enabling environment for journalists to perform their work independently and without undue interference,” including awareness campaigns for members of the judiciary, law enforcement, and military personnel.⁸³

UN Security Council Resolution 1738, adopted in 2006, condemns attacks and violence against media professionals, and civilians more generally, in conflict situations.⁸⁴ It calls for accountability for violations of international humanitarian law and asks the Secretary-General to include the issue of journalist safety in reports on the protection of civilians in armed conflict in the future.⁸⁵ Resolution 2222, adopted in 2015, calls for parties to armed conflict to immediately release journalists who have been kidnapped or taken hostage, highlights the importance of international humanitarian law trainings, reminds UN peacekeeping missions to report crimes against media workers, and urges improved international cooperation to ensure the safety of journalists in conflict zones.⁸⁶

The UN Human Rights Council has adopted a number of resolutions pertaining to the safety of journalists as well. Resolution 21/12, adopted in 2012, reminds parties engaged in armed conflict to respect their Geneva Convention obligations to allow media access and protect journalists, urges member states to implement voluntary protection programs for media professionals, and stresses the need for better coordination in the implementation of the UN Plan of Action on the Safety of Journalists and the Issue of Impunity.⁸⁷ Resolution 23/2, adopted the following year, entitled *The role of freedom of opinion and expression in women’s empowerment*, calls on member states to eliminate impunity for the use of gender-based violence to suppress the exercise of freedom of expression.⁸⁸ The Human Rights Council also held a panel discussion on the safety of journalists in 2014, during which many member states “pointed out that the issue of impunity had time and again been recognized as the biggest obstacle for effectively ensuring the safety of journalists.”⁸⁹

The Office of the United Nations High Commissioner for Human Rights published its own report on the safety of journalists in 2013. The report provides an overview of relevant international law, reviews actions taken by states and international organizations, including the UN, to protect the safety of journalists, and sets out guidelines for states to ensure the safety of media professionals in the future.⁹⁰ The report makes several recommendations

[bol=A/RES/68/163&referer=http://www.un.org/es/ga/68/resolutions.shtml&Lang=E](http://www.un.org/es/ga/68/resolutions.shtml&Lang=E).

83 Id.

84 UN Security Council (23 December 2006); “Resolution 1738 (2006),” S/RES/1738, available at: <http://www.refworld.org/docid/45c30c6fc.html>.

85 Id.

86 UN Security Council (27 May 2015); “Resolution 2222 (2015),” S/RES/2222, available at: <http://www.refworld.org/docid/5589347c4.html>.

87 UN Human Rights Council (UNHRC) (9 October 2012); “Resolution 21/12. Safety of journalists,” A/HRC/RES/21/12, available at <http://www.refworld.org/docid/50adf4812.html>.

88 UNHRC (24 June 2013); “Resolution 23/2. The role of freedom of opinion and expression in women’s empowerment,” A/HRC/RES/23/2, available at: <http://www.refworld.org/docid/53bd1c254.html>.

89 UNHRC (23 July 2014); “Summary of the Human Rights Council panel discussion on the safety of journalists,” A/HRC/27/35, available at <http://www.ohchr.org/EN/HRBodies/HRC/Regular-Sessions/Session27/Pages/ListReports.aspx>.

90 UNHRC (1 July 2013); “The safety of journalists: Report of the Office of the United Nations High Commissioner for Human Rights,” A/HRC/24/23, available at: http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/24/23.

with respect to combating impunity, including the designation of investigative units or mechanisms specifically for crimes against journalists and the creation of databases or other information-gathering and sharing tools to record threats and incidents of violence against members of the press.⁹¹

Additionally, a number of UN Special Rapporteurs have addressed the subject of impunity for crimes against journalists in their reports, including the Special Rapporteur on the promotion and protection of the right to freedom of expression and opinion,⁹² the Special Rapporteur on extra-judicial, summary, or arbitrary execution,⁹³ the Special Rapporteur on torture,⁹⁴ and the Special Rapporteur on the situation of human rights defenders.⁹⁵

2.b- The Organization of American States

Various bodies of the Organization of American States (OAS) have addressed the issue of impunity for crimes against journalists in the Americas. In its October 2000 Declaration of Principles on Freedom of Expression, the Inter-American Commission on Human Rights affirmed that violence and threats against media workers interfere with the right to freedom of expression and access to information:

“The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”⁹⁶

The Inter-American Court of Human Rights has heard a number of cases related to crimes against journalists and other media workers. In its judgments, it has highlighted states’ positive obligations, such as the duty to ensure adequate investigations of certain violations, with respect to the rights laid out in the American Convention, including the right to freedom of expression:

“The effective exercise of freedom of expression depends upon social conditions and practices that stimulate such exercise... Within the framework of the obligations to guarantee the rights enshrined in the Convention, the State must abstain from acting in a way that fosters, promotes, favors or deepens such vulnerability and it

91 Id.

92 See UNHRC (2012); “Report of the Special Rapporteur,” *supra* note 14.

93 See UNHRC (10 April 2012); “Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns,” A/HRC/20/22,, available at http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-22_en.pdf.

94 See UNHRC (4 March 2013); “Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez (Addendum),” A/HRC/22/53/Add.4,, available at http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.53.Add.4_Advance_version.pdf.

95 See UNHRC (21 December 2011); “Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya,” A/HRC/19/55, available at: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-55_en.pdf.

96 Inter-American Commission on Human Rights (20 October 2000); “Declaration of Principles on Freedom of Expression,” available at <https://www.oas.org/en/iachr/mandate/Basics/declaration-principles-freedom-expression.pdf>.

has to adopt, whenever appropriate, the measures that are necessary and reasonable to prevent or protect the rights of those who are in that situation, as well as, where appropriate, investigate the facts that affect them.⁹⁷

The importance of timely and competent investigations in deterring future rights violations was explained in the Court's 2009 judgment in the case of *Ríos et. al. v. Venezuela*:

"The investigation of the violation of a specific substantive right may be a way to shelter, protect, or guarantee that right... In cases of extrajudicial killings, forced disappearances, torture, and other grave violations to human rights, the Tribunal has considered that carrying out an investigation *ex officio*, without delay and in a serious, fair, and effective manner is a fundamental element that contributes to the protection of certain rights affected by those situations, such as personal freedom, the right to humane treatment, and life. It is considered that in those cases impunity will not be eradicated without the determination of the general responsibilities –of the State- and individuals – criminal and of any other nature of its agents or individuals -, which complement each other."⁹⁸

In *Ríos*, the Court found Venezuela, through its failure to conduct an adequate investigation into the harassment and intimidation of a group of journalists, to have breached its obligations to respect the rights to humane treatment and the freedom to seek, receive, and impart information under the American Convention.⁹⁹ The Court also suggested that criminal investigations and prosecutions are appropriate when violence is used to suppress freedom of expression:

"[T]he appropriateness of criminal proceedings as the adequate and effective resource to guarantee [the right to freedom of expression] will depend on the act of omission that violated said right. If the freedom of expression of a person has been affected by an act that has also violated other rights, such as personal freedom, personal integrity, or life, the criminal investigation may be an adequate resource to protect that situation."¹⁰⁰

The OAS Special Rapporteur for Freedom of Expression has also voiced concerns over impunity for crimes against the media in the region and has distributed several publications on the subject. One study, published in 2008, analyzed the progress of investigations into journalist murders that took place in Latin America between 1995 and 2005. The report found "a deplorable picture of impunity in the region which translates, overall, into a failure to investigate, pursue, capture, prosecute, and punish those responsible for the murders of journalists and members of the communications media."¹⁰¹ It emphasized states' obligations to investigate violations of the right to life under the Inter-American System and made recommendations for eliminating impunity in the future.¹⁰² These recommendations include ending delays in evidence-gathering and investigation, providing

97 Case of *Perozo et. al. v. Venezuela*, Inter-Am. Ct. H.R. (Series C) No. 195, 28 January 2009, para. 118, available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_195_ing.pdf.

98 Case of *Ríos et. al. v. Venezuela*, Inter-Am. Ct. H.R. (Series C) No. 194, 28 January 2009, para. 283, available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_194_ing.pdf.

99 *Id.* at para. 334.

100 *Id.* at para. 285.

101 Inter-Am. Comm'n H.R. (8 March 2008); "Special Study on the Status of Investigations into the Murder of Journalists," available at <http://www.cidh.org/relatoria/section/Asesinato%20de%20Periodistas%20INGLES.pdf>; para. 128.

102 "Special Study on the Status of Investigations into the Murder of Journalists," *supra* note 55.

security for witnesses, family members, prosecutors, attorneys, and judges, and guaranteeing that sentences are carried out once imposed.¹⁰³

In 2013, the Special Rapporteur produced another report, entitled Violence against journalists and media workers: Inter-American standards and national practices on prevention, protection, and prosecution of perpetrators. The report's concluding recommendations include adopting preventative measures, such as freedom of expression trainings for law enforcement and security forces, ensuring impartial and effective investigations, and implementing special protective measures to protect women journalists and journalists in situations of armed conflict.¹⁰⁴

2.c- The Council of Europe and the European Union

The Council of Europe and the European Union have taken a number of steps to combat impunity for crimes against journalists in the European region. In April 2014, the Committee of Ministers of the Council of Europe adopted a declaration On the protection of journalism and safety of journalists and other media actors.¹⁰⁵ The declaration states that “[a]ttacks against journalists and other media actors constitute particularly serious violations of human rights because they target not only individuals, but deprive others of their right to receive information, thus restricting public debate, which is at the very heart of pluralist democracy.”¹⁰⁶ The report cites eliminating impunity for such crimes by way of effective investigations as a “crucial obligation” of each state, “as a matter of justice for the victims, as a deterrent with respect to future human rights violations and in order to uphold the rule of law and public trust in the justice system.”¹⁰⁷

The Committee also resolved to create an online resource “drawing on information supplied by interested media freedom organizations to record and publicize possible infringements on the rights” to freedom of expression.¹⁰⁸ In April of 2015, together with four partner organizations, the Council of Europe launched an internet platform to collect information “concerning serious physical threats to journalists and other media personnel, threats to the confidentiality of media sources and forms of political or judicial intimidation.”¹⁰⁹

In 2014, the Council of the European Union adopted the EU Human Rights Guidelines on Freedom of Expression Online and Offline. These guidelines stress that efforts to combat impunity for crimes against

103 Id. at para 146.

104 Inter-Am. Comm’n H.R (31 December 2013); “Violence against journalists and media workers: Inter-American standards and national practices on prevention, protection, and prosecution of perpetrators,” available at http://www.oas.org/en/iachr/expression/docs/reports/2014_04_22_Violence_WEB.pdf; para. 297.

105 Council of Europe (30 April 2014); “Declaration of the Committee of Ministers on the protection of journalism and safety of journalists and other media actors,” available at <https://wcd.coe.int/ViewDoc.jsp?id=2188999>.

106 Id. at para. 5.

107 Id. at para. 8.

108 Id. at para. 11.

109 Council of Europe (2 April 2015); “Council of Europe launches an Internet platform to protect journalism and promote safety of journalists,” available at <http://www.coe.int/en/web/media-freedom/-/council-of-europe-launches-an-internet-platform-to-protect-journalism-and-promote-safety-of-journalists>.

journalists should also encompass protections for “‘citizen journalists’, bloggers, social media activists and human right defenders.”¹¹⁰ The Council committed to implementing the UN Plan of Action and promoting legislation to facilitate the investigation and prosecution of these crimes.¹¹¹ It also pledged to encourage its member states to ensure effective investigations and allow international observers to monitor progress of trials.¹¹²

The European Court of Human Rights has also emphasized “the key importance of freedom of expression as one of the preconditions for a functioning democracy.”¹¹³ In the 2000 case of *Özgür Gündem v. Turkey*, the Court noted that “[g]enuine, effective exercise of this freedom does not depend merely on the State’s duty not to interfere, but may require positive measures of protection, even in the sphere of relations between individuals.”¹¹⁴ The applicants in this case, editors and owners of the newspaper *Özgür Gündem*, alleged in part that the government had failed to adequately address the harassment and violence directed at journalists, distributors, and others associated with their publication. The Court agreed, concluding that the government’s response to the incidents in question, which included arson, bombings, and fatal shootings, had been inadequate.¹¹⁵ The Court therefore determined that the government had failed in its positive obligations to “take adequate protective and investigative measures” to safeguard the applicants’ right to freedom of expression, in violation of the European Convention on Human Rights.¹¹⁶

2.d- African Instruments and jurisprudence

The African Commission on Human and Peoples’ Rights adopted in October 2002 the “Declaration of Principles on Freedom of Expression in Africa”.¹¹⁷ Similarly to the previous document cited in this report, Principle IX established not only that [a]ttacks such as the murder, kidnapping, intimidation of and threats to media practitioners and others exercising their right to freedom of expression, as well as the material destruction of communications facilities, undermines independent journalism, freedom of expression and the free flow of information to the public” but also declares that “[s]tates are under an obligation to take effective measures to prevent such attacks and, when they do occur, to investigate them, to punish perpetrators and to ensure that victims have access to effective remedies.”

Moreover, in its 51st Ordinary Session, held in Banjul, The Gambia, from 18 April to 2 May 2012 the African Commission adopted Resolution 221 where it called on Somali authorities, the AU and the international community to support the establishment of an Independent Commission of Inquiry to investigate the killings of

110 Council of the European Union (12 May 2014); “EU Human Rights Guidelines on Freedom of Expression Online and Offline,” available at: <http://ec.europa.eu/digital-agenda/en/news/eu-human-rights-guidelines-freedom-expression-online-and-offline>: para. 5.

111 Id. at paras. 29-31.

112 Id. at para 29.

113 *Özgür Gündem v. Turkey*, App. No. 23144/93, 2000 Eur. Ct. H.R., para. 43 available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58508>.

114 Id.

115 Id. at para. 44.

116 Id. at para. 71.

117 Available at <http://www.achpr.org/mechanisms/freedom-of-expression/Declaration%20of%20Principles%20on%20Freedom%20of%20Expression%20in%20Africa/>

journalists and other violent attacks against them, so as to end the culture of impunity.¹¹⁸

In June 2014, The Gambia was ordered by the Economic Community of West African States Court of Justice to pay US\$50,000 to the family of murdered editor Deyday Hydara, as compensation for failure to effectively investigate the murder, and US\$10,000 for legal costs. However, there has been non-compliance by The Gambia with two earlier ECOWAS rulings, one on the disappearance of a journalist and another on the torture of a journalist.¹¹⁹

In June 2015, the African Court on Human and Peoples' Rights, created in 1998, ordered the government of Burkina Faso to re-open the investigation into the killing of journalist Norbert Zongo and three others, 17 years earlier. The court reportedly ordered the payment of monetary damages and costs to the victims relatives, instructed Burkina Faso to publish its judgement widely within the country, and ordered a report on implementation within six months.¹²⁰

2.e- Joint Declarations

In 2012, the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, the OAS Special Rapporteur on Freedom of Expression, and the African Commission on Human and Peoples' Rights' Special Rapporteur on Freedom of Expression and Access to Information issued their Joint Declaration on Crimes Against Freedom of Expression. The declaration calls for states to recognize crimes against freedom of expression as "particularly serious" and deserving of increased penalties.¹²¹ It outlines relevant principles and obligations under international law, and it provides standards and guidelines for ensuring independent, timely, and effective investigations.¹²²

In 2013, the UN Special Rapporteur on Freedom of Opinion and Expression and the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights issued a joint declaration in response to reports of threats and violence against members of the media covering demonstrations in Latin America.¹²³ The Rapporteurs emphasized that "[a]ttacks against journalists who cover these events violate both the individual aspect of freedom of expression—insofar as they prevent journalists from exercising their right to seek and disseminate information, and creates a chilling effect—as well as its collective aspect—in that they

118 Available at <http://www.achpr.org/sessions/51st/resolutions/221/>

119 <https://cpj.org/2014/06/ecowas-court-rules-gambia-failed-to-investigate-jo.php>; <https://www.article19.org/join-the-debate.php/150/view/>

120 <https://www.opensocietyfoundations.org/voices/african-court-orders-remedies-and-damages-case-murdered-journalist>

121 OSCE (25 June 2012); "International Mechanisms for Promoting Freedom of Expression – Joint Declaration on Crimes Against Freedom of Expression," available at <http://www.osce.org/fom/91595>.

122 Id.

123 OAS (13 September 2013); "Joint declaration on violence against journalists and media workers in the context of protests," available at <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=951&lID=1>.

deprive society of the right to know the information that journalists obtain.”¹²⁴ A state’s obligation to reporters, they affirmed, “is not limited to granting specific protective measures to journalists; it also includes the duty to create the necessary conditions to mitigate the risks of practicing their profession in such situations.”¹²⁵

Representatives of the OSCE, the Council of Europe, and UNESCO also participated in an international conference on the safety of journalists in Warsaw in 2013. Their suggestions included increased cooperation between governments and the UN system, training for law enforcement officers and members of the judiciary, and more thorough monitoring of threats against journalists.¹²⁶

In September 2014, Special Rapporteurs from the UN, OSCE, and OAS issued a joint statement urging greater protections for journalists covering conflict. “The prevailing impunity for attacks on civilians, including journalists, encourages perpetrators to believe that they will never be held to account for their grave crimes,” they said, adding that “attacks also deter and sometimes prevent journalists from exercising their right to seek and disseminate information. Attacks deprive all of us of the right to know and to access information about critical situations around the world.”¹²⁷

3.- A Sample of Countries’ Responses to Impunity for Crimes Against Journalists.

Several countries in Latin America have attempted to confront threats to freedom of information, expression, and the press due to journalist killings and subsequent impunity in various ways. Generally, the different types of programs implemented by the government in these situations can be broken down into three categories: programs of protection, special investigative bodies, and federalization of crimes against journalists. Examples of such initiatives that have been implemented in countries such as Mexico, Colombia, Honduras, and Guatemala are outlined in more detail below. Although all three dimensions are complementary, the focus of this paper is on impunity. Accordingly, the dimensions of protection are signaled in Appendix I, with attention being given immediately below to special investigative bodies and federalization of crimes against journalists.

3.b- Special Bodies of Investigation

Unlike programs of protection that focus primarily on mitigating or eliminating specific threats of harm, special bodies of investigation are more concentrated on tackling the issue of impunity. One example is an initiative in Mexico. The Special Prosecutor for Crimes against Journalists (FEADP) was created as part of the federal Attorney General’s Office in 2006 via administrative agreement A/031/06 to specifically address impunity in crimes against journalists.¹²⁸ In 2009 the name was changed to the Special Prosecutor’s Office for

124 Id.

125 Id.

126 UNESCO (24 April 2013); “Recommendations of the international conference on the safety of journalists,” available at http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CI/CI/pdf/official_documents/Warsaw_recommendations_safety_2013.pdf.

127 OSCE (1 September 2014); “International freedom of expression rapporteurs urge stronger protection of journalists covering conflicts,” available at <http://www.osce.org/fom/123084>.

128 CELE (2012), *supra* note 78, at 21-22.

Crimes against Freedom of Expression (FEADLE), which is how it is now known, and the mission shifted from primarily collecting information to more focus on investigation and prosecution.¹²⁹

As part of further reforms in 2012 and 2013, FEADLE was given more detailed and exhaustive power to assert its jurisdiction in relation to investigations and prosecutions of crimes against the right to information and freedom of expression or press.¹³⁰ The office now has 9 circumstances in which it has the right to assert its jurisdiction:

When there is evidence of involvement by a public servant in the crime,
When the victim says a public servant is allegedly responsible,
In case of serious crimes classified by law,
When the life or physical integrity of the victim is under real danger,
Upon request from the relevant federal authority,
When the constituting facts of the crime have an important impact on exercising the right to information or freedom of expression or press,
When general or objective circumstances of risk to freedom of expression or press or right to information exist in the federal entity where the offense or its results were presented,
When the offense transcends the scope of one or more federal authorities, and
When there was a sentence or resolution by an international organization that determined the Mexican state was responsible because of defects or omissions in the investigation, prosecution or indictment of crimes against journalists, persons or establishments that affect, limit, or impair the right to information or freedom of expression or press.¹³¹

The federalization of crimes against journalists, detailed below, was also passed in 2012 to expand FEADLE's jurisdiction, which is only regarding federal crimes.¹³² The budget of the office has steadily grown in correlation from \$3.000.000 Mexican pesos in 2012 to \$39.013.777 Mexican pesos in 2014.¹³³ Under the auspice of the Assistant Attorney General's Office for Human Rights, Assistance to Victims and Services to Community, the staff, however, is relatively small at 30 people.¹³⁴ The head of FEADLE is Special Prosecutor Laura Borbolla.¹³⁵

Another example of a special prosecutorial body that is unlike any other in the region is the International Commission Against Impunity (CICIG) in Guatemala. CICIG is unique because it is a multilateral entity created in partnership with the United Nations to support the national government's efforts to combat impunity and violence.¹³⁶ The government of Guatemala initially signed an agreement with the UN in 2004 that contained

129 CELE (2012), *supra* note 78, at 21.

130 Article 19 (24 March 2015); "Estado de Censura," Mexico, available at https://www.scribd.com/fullscreen/259296791?access_key=key-JhKvY074E7oZJql1HX0F&allow_share=true&escape=false&view_mode=scroll.

131 *Id* at 118. Translations are my own.

132 *Id* at 118. CELE (2012), *supra* note 78, at 23-24.

133 Article 19 (2015), *supra* note 125, at 119.

134 CELE (2012), *supra* note 78, at 25.

135 Article 19 (2015), *supra* note 125, at 119.

136 CELE (2012), *supra* note 78, at 75.

provisions for establishing the Commission for the Investigation of Illegal Groups and Clandestine Security Organizations.¹³⁷ Due to efforts by the international community and consensus of various national political forces, President Portillo ultimately ceded to demands for the program and the commission was created in 2006.¹³⁸ CICIG was not ratified by Congress until August 2007, however, because the program needed to be significantly redesigned after the Supreme Court found the commission to be in violation of the exclusive constitutional delegation of power to the Attorney General's Office to prosecute cases, among other issues.¹³⁹

The commission is an independent body from a political, organizational and financial standpoint. All of the staff is hired and trained in line with UN standards and, although the state provides office space and security, CICIG is funded completely by private contributions from the international community.¹⁴⁰ The commission is headed by a Commissioner and includes 5 units: the Commissioner's Office, Investigations' Office, Litigation, Human Resources and Security.¹⁴¹ Within these units is a staff that is comprised of 162 international and national officials as of 2013, the latest data available on their website.¹⁴² The current Commissioner of CICIG is Ivan Velasquez of Colombia, appointed by the Secretary-General of the UN on August 31, 2013.¹⁴³

The commission's main goal is to dismantle and eradicate illegal and clandestine organizations in Guatemala and combat impunity more generally, not just against the press.¹⁴⁴ CICIG works towards that goal by investigating certain types of cases, recommending policies for the government to implement, and initiating criminal or disciplinary action before relevant authorities against public servants who obstruct their work.¹⁴⁵ The commission can also work alongside prosecutors in bringing cases to trial, but ultimately only the Attorney General's Office has the authority to press criminal charges.¹⁴⁶ In choosing their cases, the CICIG primarily takes into consideration the likelihood of links with illegal and clandestine security organizations, the short and long term political impact of the case on the fight against impunity, and the probability of success.¹⁴⁷ To that end, the commission has been involved in several high profile cases, including most recently a customs fraud ring that lead to the arrest of 22 people.¹⁴⁸

Due to its inability to prosecute cases on its own, status as a multilateral entity, and mandate to help the government of Guatemala improve their handling of the problem, the CICIG has signed various agreements

137 CELE (2012), *supra* note 78, at 76.

138 CELE (2012), *supra* note 78, at 76.

139 CELE (2012), *supra* note 78, at 76.

140 CELE (2012), *supra* note 78, at 77-78.

141 CELE (2012), *supra* note 78, at 79.

142 CICIG (August 2013); "Sixth Report of Activities of the International Commission against Impunity in Guatemala (September 2012 - August 2013)," Guatemala, available at <http://www.cicig.org/uploads/documents/2013/COM-045-20130822-DOC01-EN.pdf>.

143 UN Department of Political Affairs (2015); "CICIG," available at http://www.un.org/wcm/content/site/undpa/main/activities_by_region/americas/cicig.

144 CELE (2012), *supra* note 78, at 75, 78.

145 CELE (2012), *supra* note 78, at 78.

146 CELE (2012), *supra* note 78, at 78.

147 CELE (2012), *supra* note 78, at 78.

148 International Justice Monitor (IJM), Sophie Beaudoin (23 April 2015); "Guatemala's President Gives CICIG Extension a Green Light," available at <http://www.ijmonitor.org/2015/04/guatemala-president-gives-cicig-extension-a-green-light/>.

with local bodies and also works closely with the Special Prosecutor's Office Against Impunity (FECI). Feci was created in January 2011 to replace the Special Prosecutor's Office for the CICIG (UEFAC) as part of the Public Prosecutor's Office, both of which were specifically established to coordinate the actions of the commission with local prosecutors.¹⁴⁹ The commission has also signed agreements of collaboration with Comptrollers' Office, Superintendence of Banks, First Lady's Works Secretariat, Office for the Defense of Indigenous Women, Presidential Secretariat for Women, Tax Administration Bureau, Ministry of Interior, UNIFEM, UNICEF, and UNODC.¹⁵⁰

The commission's mandate is renewable every two years and currently set to expire on September 3, 2015.¹⁵¹ In early 2015, President Otto Perez Molina appointed a committee to examine whether Guatemala still needed the CICIG.¹⁵² The committee was composed of the president of the Supreme Court, the Attorney General, the Minister of Interior and the Director of the Public Defense Institute.¹⁵³ Their report,¹⁵⁴ which was issued in April 2015, unanimously recommended the extension of the mandate and the president subsequently agreed to ask the UN for an extension.¹⁵⁵ The UN has expressed a willingness to continue the efforts of the CICIG.¹⁵⁶

3.c- Federalization of Crimes Against Journalists

One final way that countries in Latin America have combated journalist killings and impunity is by the federalization of crimes against journalists. The purpose of federalization is to allow federal investigative bodies to pursue charges in circumstances involving attacks on freedom of expression, access to information, and the press where they previously would not be able to since the crimes committed would otherwise be local in nature. The federal government is generally considered by civil society to be at least somewhat more capable to battle against the corruption and intimidation that stands in the way of local authorities handling these cases properly.

Mexico, for example, passed a constitutional amending in June 2012 that modified Article 73 of the Constitution to give "federal authorities the power to investigate and try crimes committed against journalists, persons or premises which affect, limit or undermine the right to freedom of expression and information, or freedom of the press."¹⁵⁷ The Mexican Congress then passed a follow up law in April 2013 that implemented the broad guarantee of the amendment and allowed prosecutorial bodies, such as FEADLE, to pursue charges even when the crime was not related to a standard federal crime.¹⁵⁸ Brazil is another country that has been

149 CELE (2012), *supra* note 78, at 77.

150 CELE (2012), *supra* note 78, at 77-78.

151 IJM (2015), *supra* note 143.

152 IJM (2015), *supra* note 143.

153 *Id.*

154 Available here: http://www.plazapublica.com.gt/sites/default/files/informe_cicig.pdf.

155 IJM (2015), *supra* note 143.

156 *Id.*

157 Article 19 (14 June 2012), "Mexico: Constitution amended, federal authorities given powers to prosecute crimes against free expression," Mexico, available at <https://www.article19.org/resources.php/resource/3330/en/mexico:-constitution-amended,-federal-authorities-given-powers-to-prosecute-crimes-against-free-expression>.

158 Committee to Protect Journalists (CPJ) (25 April 2013); "CPJ commends new Mexican legislation," New York, available at <https://www.cpj.org/2013/04/cpj-commends-new-mexican-legislation.php>.

considering federalization legislation as violence has been increasing.¹⁵⁹ In March 2014, Chief of the Human Rights Secretariat to the Presidency said federalization of crimes against journalists would be included in reforms of Law 10.466/2002.¹⁶⁰ However, despite many requests from civil society for federalization, the legislation has yet to be passed.

4.- Conclusions and Recommendations

Any threat or act of violence against a media worker endangers not only that individual's ability to exercise his or her right to freedom of expression, but also the rights of many other members of society to receive and access information freely. This situation is perpetuated by impunity, and the statistics demonstrate a correlation between high rates of violence against journalists and high rates of impunity more broadly.

The concern about attacks on journalists and impunity has emerged as an issue within the UN's new Sustainable Development Goals that will guide many policy decisions around the world between 2016 and 2030. At the time of writing, the SDGs included Goal 16, to "promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels."

The issue of impunity for attacks on journalists as emblematic of wider social problems is very relevant to justice for all as a development goal. It also links particularly to the following three more specific targets under Goal 16:

16.1 significantly reduce all forms of violence and related death rates everywhere

16.3 promote the rule of law at the national and international levels, and ensure equal access to justice for all

16.10 ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements.

To assess each society's progress towards achieving these three targets, the UN is currently developing relevant indicators. One that has been suggested by UNESCO and the Office of the High Commissioner of Human Rights is: "Number of verified cases of killing, kidnapping, enforced disappearance, arbitrary detention and torture of journalists, associated media personnel, trade unionists and human rights advocates (in the previous 12 months)".

In these ways, the issue of safety and impunity of journalists is likely to become mainstreamed within the global development agenda for the next 15 years. It shows that safety of journalists and combatting impunity are not just rights questions, but also integral to the vision of what durable development looks like.

159 CPJ (26 May 2015); "Second Journalist killed in Brazil in less than a week," New York, available at <https://cpj.org/2015/05/second-journalist-killed-in-brazil-in-less-than-a-.php>.

160 Universal Human Rights Research Association (UHRRA) (22 March 2014); "Human Rights Secretariat in Brazil proposes actions to increase the safety of journalists," available at <http://uhrra.org/human-rights-secretariat-in-brazil-proposes-actions-to-increase-the-safety-of-journalists/>.

All this helps contextualise why the Intergovernmental Council of UNESCO's International Programme for the Development of Communication in 2014 described the safety of journalists and issue of impunity "as a key gateway to achieving Goal 16" in regard to promoting peaceful and inclusive societies for sustainable development and access to justice for all through achieving a reduction in violence and crime.¹⁶¹

It is also these insights that have led to intergovernmental organizations and international courts from various regions of the world increasingly addressing this issue through resolutions, declarations, judgments, and policy proposals; their efforts point to a growing international consensus that the best way to prevent violence against journalists is to hold perpetrators accountable. Eliminating impunity requires timely, effective investigations and the prosecution of all individuals responsible for the crimes in question, including those who have orchestrated or financed acts of violence. It may also involve media or witness protection programs, training for law enforcement and military personnel, and awareness campaigns for politicians, judges, and the public. Various Latin American governments, in countries with some of the gravest problems with crimes against journalists and impunity, have implemented some or all of these recommendations, albeit imperfectly. Unfortunately, high rates of violence and impunity persist.

There are a number of steps that states can take to improve the efficacy of these programs and policies. Promoting coordination among local and federal prosecutors, police, legislators, and other government agencies is one way to improve efficiency in combatting impunity. It is equally important for governments to ensure that the departments charged with investigating and prosecuting crimes against the media have the requisite resources to do so. Without an adequate budget and sufficient personnel, delays and lapses in investigations will continue, and effective prosecutions will remain rare. Prioritizing this issue, coordinating efforts among various governmental bodies, and providing adequate funding are crucial to ending violence against journalists and impunity in the region.

Moreover, governments should take into account the "proposed actions" included in the UN Plan of Action on the Safety of Journalists and the Issue of Impunity mentioned above, mainly when they are in the process to design or implement policies to end impunity in crimes against journalists. Particularly they should "develop legislation and mechanisms guaranteeing freedom of expression and information, including, for example, requirements that States effectively investigate and prosecute crimes against freedom of expression"; States should also improve national legislation on safeguarding journalists and take an active role in the prevention of attacks against journalists.

For judicial actors in particular, there is potential to raise levels of knowledge about the wider importance of protecting journalists as a means towards safeguarding freedom of expression and strengthening the rule of law more broadly. There are strong norms that can be referenced in guiding decision-making and which can also galvanise attention to the issue. There is emerging jurisprudence from around the world, as well as growing numbers of good practices in how best to investigate cases so these come before the courts for due assessment. It is, in short, evident that lawyers, judges, prosecutors and police have a key role to play, within their mandate, in ending a scourge that has wide social visibility and ramification.

161 http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CI/CI/pdf/IPDC/ipdc29EN_IPDC29_FULL_DECISIONS_FINAL.pdf

To conclude: how can the problem of violence against journalists and subsequent impunity be effectively addressed? At the end, if special prosecutorial offices are established to specifically investigate these crimes, it will generate momentum for prosecutors more generally to carry out proper and effective investigations to all crimes. Thus, while the impunity problem for attacks against journalists is often one manifestation of a much larger systemic problem, these crimes provide an entry point that can help to resolve the broader issues. To address violence against journalists in a concerted way is therefore a strategic place to make impact on the larger issues of corruption, general impunity, and weakness of the judiciary. In the end, if impunity for attacks on journalists can be ended, society and justice as a whole will be the winner.

APPENDIX:

Programs of Protection

One of the oldest and largest programs of protection that has been implemented in Latin America is the one in Colombia. The initiative emerged as a reactive, emergency response to a crisis situation at a time when Colombia had a very high rate of threats and killings of journalists and other vulnerable populations.¹⁶² While initially meant to be temporary, the program now provides protection for 7,500 at risk people at a total cost of \$600,000USD per day.¹⁶³ In 2015 alone, the National Protection Unit (UNP) was allocated a budget of \$371.251.885.905,00 pesos (aprox. US\$115,000,000.00) in January¹⁶⁴ as well as a total of \$57.422.058.541,00 pesos of additional funds in April.¹⁶⁵

Law 199/95 established the original regulatory framework and Decree 1592/2000 created the program specifically for protecting journalists.¹⁶⁶ Protective measures provided range from bulletproof vests and the installation of security systems to armed escorts with vehicles to help leaving the country in the highest risk cases.¹⁶⁷ Since 2000, the program has been restructured several times culminating in the most recent reforms via Decree 4065/2011¹⁶⁸ and Decree 4912/2011.¹⁶⁹ Decree 4065 created UNP, which is primarily in charge of implementing the protective measures, and Decree 4912 the Committee of Risk Evaluation and Recommendation of Measures (CERREM), which is in charge of evaluating threats and recommending the necessary protective measures. Despite multiple changes, however, the key aspects of the program and people involved have largely remained the same.¹⁷⁰

162 Center for Studies on Freedom of Expression and Access to Information (CELE), Natalia Torres and Eduard Bertoni (April 2012); "Institutional Design and Effectiveness of the Agencies Charged with Protecting Journalists and Investigating Crimes Against the Press: Mexico, Colombia, and Guatemala," Argentina, available at <http://www.palermo.edu/cele/pdf/english/Internet-Free-of-Censorship/Institutional-Design.pdf>.

163 Dieste, Alina (November 2014); "High price of keeping Colombians alive," Bogota, available at <http://news.yahoo.com/high-price-keeping-colombians-alive-041525106.html>

164 UNP Resolucion 001 de 02 Enero 2015. Available at <http://www.unp.gov.co/planeacion/Documents/Resolucion%200001.pdf>.

165 UNP Resolucion 198 de 8 Abril 2015. Available at <http://www.unp.gov.co/planeacion/Documents/Resolucion%20No%200198%20del%208%20de%20abril%20de%202015.pdf>; Minhacienda Resolucion 967 (13/4/2015). Available at <http://www.unp.gov.co/planeacion/Documents/Resl%20No%20967%20%20de%202015.pdf>.

166 CELE (2012), *supra* note 78, at 45.

167 CELE (2012), *supra* note 78, at 53.

168 Decreto 4065 de 2011. Available at <http://www.unp.gov.co/Documents/decretos/dec406531102011.pdf>.

169 Decreto 4912 de 2011. Available at <http://wsp.presidencia.gov.co/Normativa/Decretos/2011/Documents/Diciembre/26/dec491226122011.pdf>

170 FreedomHouse, Fundación Para La Libertad de Prensa (FLIP) (year); "El programa colombiano de protección a periodistas," Colombia, available at <https://freedomhouse.org/sites/default/files/El%20Programa%20Colombiano%20de%20Protección%20a%20Periodistas.pdf>: 7.

The governing body of the UNP is the Directive Committee, which consists of the Minister of Interior, Minister of National Defense, Director General of the National Police, Director of the Presidential Program of Human Rights Protection and Vigilance and International Humanitarian Law, and Director of Human Rights or the respective delegate.¹⁷¹ The Director General of UNP attends the committee's meetings, but has no vote.¹⁷² Until December 2014, the Director General resigned at the request of the president due to criticism regarding his financial management of the organization.¹⁷³ His successor does not, however, have experience in the public sector, security or human rights.¹⁷⁴¹⁷⁵

Although UNP can assign temporary protective measures in case of an emergency, the CERREM is ultimately responsible for evaluating cases, determining the necessary protective measures, and following up on implementation.¹⁷⁶ The permanent members of the committee are the Director of the Human Rights Administration, Director of the President's Human Rights and International Humanitarian Law Program, Director of the Special Administrative Unit for Attention and Reparation for Victims, the Director of Protection and Special Services of the National Police, and the Coordinator of the Human Rights Office of the Inspector General of the National Police or each members relevant delegate.¹⁷⁷ Furthermore, the permanent invitees are a delegate from the Attorney General's Office¹⁷⁸, Ombudsman's Office, Inspector General's Office, Office of the UN High Commissioner of Human Rights, and UN High Commissioner for Refugees (in applicable cases) as well as four delegates from the target populations of the cases being analyzed and any other public or private entities deemed appropriate.¹⁷⁹ The CERREM has always been notable for the key involvement of civil society in this process.¹⁸⁰

Another example of a protection program implemented in Latin America is the Mechanism to Protect Human Rights Defenders and Journalists¹⁸¹ (hereafter referred to as the "Mechanism") in Mexico. Although journalists and other vulnerable groups previously had a patchwork of other organizations to turn to, civil society began lobbying for the creation of this organization in 2010 in order to create a more centralized, effective, fast, flexible and reliable means of protection.¹⁸² On July 7, 2011 President Felipe Calderon and UN

171 Decreto 4065, supra note 84, at 2.

172 Id at 3.

173 (19 January 2015); "Diego Fernando Mora, nuevo director de la Unidad Nacional de Protección," Colombia, available at <http://www.noticiasrcn.com/nacional-pais/diego-fernando-mora-nuevo-director-unidad-nacional-proteccion>

174 Columbia Reports (February 2015); "Colombia's system to protect journalists 'presents serious flaws,' report," available at <http://colombiareports.com/colombias-system-protect-journalists-presents-serious-flaws-report/>.

175 Full organizational structure available here: <http://www.unp.gov.co/la-unp/PublishingImages/organigrama/ORGANIGRAMA.pdf>

176 Decreto 4912, supra note 85, at 9-10.

177 Id at 23-24.

178 For the entirety of this document, "Procurador General de la Nacion" is translated as "Attorney General's Office" and "Fiscal General de la Nacion" is translated as "Inspector General's Office."

179 Decreto 4912, supra note 85, at 24.

180 CELE (2012), supra note 78, at 50.

181 Also has been referred to as the Committee to Protect Journalists.

182 Washington Office on Latin America (WOLA) (January 2015); "The Mechanism to Protect Human Rights Defenders and Journalists in Mexico: Challenges and Opportunities," Washington,

High Commissioner of Human Rights Navi Pillay signed a presidential decree authorizing the Human Rights Unit of the Interior Ministry (SEGOB) to develop and implement such a program.¹⁸³ Congress passed a supporting law on April 30, 2012 and the Mechanism became operative in November 2012.¹⁸⁴

The Mechanism consists of 3 Units: the Unit for the Reception of Cases and Rapid Reaction, the Risk Evaluation Unit, and the Unit for Prevention, Monitoring and Analysis.¹⁸⁵ Collectively these units receive requests for protection, process these requests by conducting a risk analysis, and grant measures in necessary cases.¹⁸⁶ A National Executive Coordinator is responsible for coordinating actions among the different areas of the Mechanism.¹⁸⁷ There is also a Governing Board responsible for oversight that consists of representatives from the following organizations at the undersecretary or equivalent level: SEGOB, National Security Commission, Foreign Affairs Ministry, Attorney General's Office, and National Human Rights Commission as well as 4 representatives of the Consultative Council, which is the civil society element.¹⁸⁸ The Governing Board is chaired by an Interior Ministry representative.¹⁸⁹ Finally, in 2013, the Technical Committee for the Fund for Protective Measures was established to oversee financial operations as funds allotted to the Mechanism are in excess of 170,000,000 Mexican pesos.¹⁹⁰

In 2014, after Secretary of the Interior admitted that the Mechanism had failed, significant work was undertaken to restructure the organization, address the backlog of cases and secure implementation of advised measures.¹⁹¹ A new head of the SEGOB was appointed on April 10, 2014 and SEGOB signed an agreement with Freedom House to provide training for staff and technical assistance in alleviating much of the backlog.¹⁹² Examples of some of the protective measures that have been provided by the Mechanism include regular police rounds to the person's home or office, panic buttons and satellite phones that can be activated in emergency situations, and the instillation of cameras and/or alarm systems.¹⁹³ The Mechanism also maintains a series of safe houses throughout the country.¹⁹⁴

Finally, and most recently, Honduras passed the Law of Protection of Human Rights Defenders, Journalists, Communicators and Operators of Justice in April 2015, creating the National System of Protection for Human Rights Defenders (Sistema Nacional de Protección para Personas Defensoras de Derechos Humanos).¹⁹⁵

D.C., available at <http://www.wola.org/sites/default/files/MX/Jan%202015-The%20Mechanism%20to%20Protect%20Human%20Rights%20Defenders%20and%20Journalists%20in%20Mexico.pdf>.

183 Id at 9.

184 Id at 9.

185 Id at 8-9.

186 Id at 8-9.

187 Id at 9.

188 Id at 9.

189 Id at 9.

190 Id at 10.

191 Id at 1-2.

192 Id at 2.

193 Id at 3-4.

194 Id at 4.

195 Orellan, Xiomara (15 April 2015); "Protección a periodistas la definirá comité especial," Tegucigalpa, available at <http://www.laprensa.hn/honduras/831422-410/protección-a-periodistas-la-definirá-comité-especial>.

The system has 5 components: the Secretary of State in the Offices of Human Rights, Justice, Governance, and Decentralization (governing body), The National Council for Protection, The Protection System Administration, The Technical Committee on Mechanisms of Protection, and the Human Rights Department of the State Security Office.¹⁹⁶¹⁹⁷ The law also creates a Special Protection Fund funded by resources from the security tax.¹⁹⁸

The National Council for Protection will serve as the supervising body of the system with responsibilities that include, for example, recommending effective implementation techniques and reviewing annual reports by other departments.¹⁹⁹ The Council will consist of delegates from the governing body, the Secretary of Exterior Relations and International Cooperation, Judiciary, Bar Association, Attorney General's Office, Inspector General, Security Office, National Defense Office, Journalist Association, Press Association, Judge and Magistrate Association, Prosecutors Association and 2 elected representatives from human rights organizations that will be known as National Human Rights Commissioners.²⁰⁰ The UN High Commissioner of Human Rights is also invited, but neither he nor the National Human Rights Commissioners have a vote.²⁰¹

Finally, the Technical Committee on Mechanisms of Protection is the body in charge of making risk assessments and determining the necessary protection measures. The committee is headed by the person who presides over the Protection System Administration as well as a representative from the Attorney General's office, Inspector General's office and the Human Rights Department of the State Security Office.²⁰² The committee is primarily responsible for producing risk evaluations that include the level of risk and scope of beneficiaries, the necessary protective measures, and the immediacy and promptness of adoption.²⁰³ These risk evaluations, which are to be re-evaluated every 6 months, are then presented to the Protection System Administration for implementation.²⁰⁴ In certain cases, implementation of security measures will also need to be partially or fully coordinated with the Human Rights Department of the State Security Office.²⁰⁵ Necessary measures of prevention and protection may include assigning a security team in serious cases and evacuation or relocation in the most extreme cases.²⁰⁶

196 Decreto 34-2015. Available at <https://focus.protectionline.org/es/2015/06/23/ley-protection-honduras/>.

197 In Spanish: Secretaria de estado en los Despachos de Derechos Humanos, Justicia, Gobernación y Descentralización, como órgano rector; Consejo Nacional de Protección para las y los Defensores de Derechos Humanos, Periodistas, Comunicadores Sociales y Operadores de Justicia; La Dirección General del Sistema Protección; El Comité Técnico del Mecanismo de Protección; y el Departamento de Derechos Humanos de la Secretaria de Estado en el Despacho de Seguridad.

198 Orellan (2015), *supra* note 111.

199 Decreto 34-2015, *supra* note 112, at 9, 11.

200 *Id* at 9-10.

201 *Id* at 10.

202 *Id* at 13.

203 *Id* at 13.

204 *Id* at 13.

205 Decreto 34-2015, *supra* note 112, at 14.

206 (15 June 2015); "Entra en vigor ley en Honduras para proteger a periodistas y defensoras DDHH," Honduras, available at <http://latino.foxnews.com/latino/espanol/2015/06/15/entra-en-vigor-ley-en-honduras-para-proteger-periodistas-y-defensores-ddhh/>.

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