

Chapter 5:

A tough push for justice: New approaches and old mechanisms for combatting impunity

When *Washington Post* columnist Jamal Khashoggi was killed and dismembered inside the Saudi embassy in Istanbul by state operatives, his case caught the world's eye, an emblem of the dangers journalists face when they cross the powerful, and the widespread impunity that made such a shocking and brazen murder possible. What followed has been the good, the bad and the ugly of the global response to impunity.

Colleagues, human rights groups and individuals around the world have pulled together to protest his murder and campaign for justice. Several governments have put sanctions in place against some of the alleged perpetrators and condemned the murder, but these actions stopped short at naming Crown Prince Mohammad Bin Salman or instituting measures that disrupt business as usual with the wealthy Gulf state. Nearly a dozen suspects are on trial in Saudi Arabia, but lack of transparency and the possibility of execution for several casts a questionable light on these proceedings. At the same time, the murder, along with a ground-breaking investigation by the UN Special Rapporteur on extrajudicial, summary or arbitrary executions into the case, has created a catalyst for serious discussions on improving international mechanisms for crimes against journalists.

Impunity is widely seen as one of the gravest threats to press freedom and development. When journalists are threatened, attacked or even killed, the perpetrators are rarely prosecuted. The oft-cited statistics – in nine of 10 killings of journalists there is no justice¹⁴³ – are telling, highlighting the scope of the problem. But it is more than numbers. Attacks against journalists, particularly murders, silence individual journalists while sending a message of intimidation to entire media landscapes. When those attacks take place without official consequence, the chilling effect on journalism is magnified.

Without justice, there is little to deter attacks against journalists, whether the perpetrators are linked to the state, organised crime, armed extremist groups or business, weakening all other SoJ work aimed at prevention and protection. The acuteness of the problem has been recognised globally and fighting impunity has become central to SoJ work. International frameworks such as the UN Plan of Action on Safety of Journalists

¹⁴³ UNESCO (2018c), p. 130.

and the Issue of Impunity put combatting impunity as a priority goal. International and national FoE groups have mounted concerted campaigns for justice year after year and many governments have pledged to take action.

Even though impunity has been at the top of the global press freedom agenda for about a decade¹⁴⁴ there has not been much change on the ground. Impunity figures have barely budged and instances of violence against journalists remains high. The last decade has seen sustained high levels of killings of journalists worldwide, reaching a total of nearly 550, according to CPJ. Less data is available on impunity for non-fatal attacks on a global level, but it is clear that these attacks are also rarely investigated and prosecuted.

Identifying effective strategies to combat impunity is a persistent challenge. Progress that has taken place has been painstaking, case-by-case and typically driven by civil society campaigns, colleagues, family members or a combination of these actors. International commitments to implement specific measures to address impunity have also gone unfulfilled by most governments. What few state mechanisms exist addressing impunity have been under-resourced, too narrow in scope or slowed by bureaucracy and politics, among other institutional issues.

State mechanisms: Too few and too flawed

Many UN and regional documents clearly outline states' obligations when it comes to investigating and prosecuting attacks against journalists. In addition to the fundamental human right that entitles all citizens to the right to life,¹⁴⁵ there are several UN resolutions that directly address SoJ and lay out steps states should take to ensure both perpetrators and masterminds of attacks against journalists are brought to justice. Among the most explicit prescribes that member states consider special measures such as the creation of special investigative units or independent commissions, appoint special prosecutors and adopt specific protocols for investigation.¹⁴⁶ It goes further to suggest that the pursuit of justice extends not only to those who pull the trigger, but to those "who command, conspire to commit, aid and abet, or cover up" violent acts against journalists.¹⁴⁷

This comes on top of the UN Plan of Action on the Safety of Journalists and the Issue of Impunity, which includes state measures to promote justice among its main aims¹⁴⁸ and the 2013 UN General Assembly resolution on the safety of journalists, which established 2 November as the International Day to End Impunity for Crimes against Journalists,¹⁴⁹ among other documents articulating UN member state commitments.¹⁵⁰ Similar obligations are outlined by regional bodies. One recent example is the OSCE's The Ministerial Decision on Safety of Journalists, which calls on participating states to "take

144 In a 2009 IFEX member survey, impunity was identified as a priority issue among the majority of members.

145 United Nations General Assembly (1948), art. 3, stating "[e]veryone has the right to life, liberty and security of person".

146 UN HRC (2014).

147 *Ibid.*, para. 3.

148 UNESCO (2012).

149 UN General Assembly (2013), para. 3.

150 IFEX (2017).

effective measures to end impunity for crimes committed against journalists by ensuring accountability as a key element in preventing future attack”.¹⁵¹

Despite a clear international mandate, there are few state SoJ mechanisms set up for addressing impunity and outcomes are mixed among those that do exist, as we look at in this chapter.

In theory, states should develop and implement strategies to combat pervasive impunity for crimes against journalists based on good practices, integrating all aspects of the Prevent, Protect and Prosecute framework, and ensuring a consistent gender-sensitive approach. A mechanism focused on prosecution must address “the failure of the regular administration of justice actors – police, prosecutors, investigation magistrates, judges – to bring those responsible to justice,” as outlined by Toby Mendel of the Centre for Law and Democracy in his 2016 discussion paper “Supporting Freedom of Expression: A Practical Guide to Developing Specialised Safety Mechanisms”.¹⁵²

This failure may take root because of corruption, intimidation or political interference compromising the work of local law enforcement and prosecutors, or because there is a lack of capacity, expertise and resources to carry out effective investigations. Ongoing conflict or political instability weaken the state’s capacity for justice, as do the presence of armed groups and powerful criminal organisations.¹⁵³ Impunity is also aided by tight information controls under authoritarian structures where there is low political will to prosecute attacks against journalists.

In practice, a national mechanism addressing impunity should offer a system that replaces, monitors, holds accountable or augments the work of agencies unable to carry out thorough and independent investigations and prosecutions. According to law professor and former Special Rapporteur for Freedom of Expression of the Inter-American Commission of Human Rights Eduardo Bertoni, they fall into two main categories: 1) special investigative bodies and 2) the “federalisation” model.¹⁵⁴ In addition, some states have undertaken legislative and other measures such as assigning special prosecutors that do not constitute a standing mechanism, but address some of the shortcomings that lead to impunity in journalist killings.

Special investigative bodies in the context of SoJ are set up to concentrate resources by convening experts to investigate new or reopen old cases. One of the longest running of these was Guatemala’s International Commission Against Impunity (CIGIG by its Spanish acronym), established in 2006 to help combat impunity and corruption.

The commission was created under a 2006 agreement with the UN and ratified by Guatemala’s national assembly. It ran for 12 years, shutting down in September 2019 after President Jimmy Morales did not renew its mandate. CICIG operated as an independent body with investigative powers set up by the United Nations and Guatemala, headed by an appointee of the UN Secretary-General, with funding and staff from several donor countries. It was empowered to independently investigate, but arrests and prosecutions depended on the country’s public ministry.¹⁵⁵

151 Organization for Security and Co-operation in Europe (2018).

152 Mendel (2016).

153 CPJ (2014).

154 Bertoni (2015).

155 Taylor (2017).

CICIG's mandate – to dismantle and eradicate illegal and clandestine organisations – was far broader than investigating attacks against journalists, but it did take up several cases of journalists targeted for reporting on crime and corruption. One recent case was the 2015 murder of Danilo López. Working with Guatemalan prosecutors, CICIG investigated the case leading to the conviction of the shooter in 2017 and the arrest of the alleged mastermind, Guatemalan lawmaker Julio Juárez Ramírez, in 2018. López had been working on a story about corruption in the city where Juárez had been mayor.

The Commission's accomplishments have been substantial. It helped obtain more than 400 convictions and contributed to the creation of a special anti-impunity prosecutor's office, FECCI by its Spanish acronym.¹⁵⁶ Proponents point to its combination of international backing, mandate and capacity to investigate independently and its working relationship with the Guatemalan attorney general's office as factors behind its success.¹⁵⁷ It is often cited as a model for other countries.

Others suggest some of the challenges CICIG faced offer valuable lessons, including the need for such a mechanism to have long-term mandates that are shielded from politics, long-term funding and a sustainable funding model (CICIG's annual budget was around 15 million USD¹⁵⁸). CICIG's hybrid national-international model was part of its success, but it also created tensions over sovereignty.¹⁵⁹ The Guatemala experience also highlights the importance of parallel efforts to strengthen national institutions so they can ultimately adequately perform the functions human rights mechanisms are set up to supplement. Where mechanisms are augmenting, or standing in for, local investigative agencies, there is also a need for measures to be in place to improve the local system.

Another example of a special investigative body can be found in Serbia. There, journalists approached the government over concerns that the murders of several colleagues remained unsolved after well over a decade. The government agreed to set up the Serbian Commission for the Investigation of Murders of Journalists in 2014.

The Commission is comprised of representatives from the journalism community, the Ministry of Internal Affairs and Serbia's national security body, the Security Information Agency. Its initial task was to reopen three cases of journalists killed in what was then Yugoslavia between 1994 and 2001. In 2018, the government expanded its remit to include a broader range of murders and other crimes against media workers committed during the Balkan wars. It also broadened its makeup to include the Serbian war crime prosecutor's office and the Serbian interior ministry's department for war crimes.¹⁶⁰

The Commission's efforts led to the conviction in April 2019 of four people, including two former state security officials, for the 1999 murder of Slavko Ćuruvija, a well-known critic of then-president Slobodan Milošević.¹⁶¹ Joining together the investigative work of both journalists and government agencies opened new opportunities to pursue seemingly cold cases. According to veteran journalist Veran Matic, who led efforts to establish the commission, it puts journalists in the position to see the evidence collected and advocate for new avenues of investigation.¹⁶²

156 WOLA (2019).

157 Taylor (2017).

158 Ibid.

159 Stanley and Call (2019).

160 Rudic (2018).

161 Organization for Security and Co-operation in Europe (2019).

162 CPJ (2014).

Matić hopes the commission will be a model not just for other countries to follow – a similar commission was established in Montenegro in 2013 and an initiative to reopen unresolved murders in Kosovo is also underway – but for regional cooperation. Journalists and other observers have pointed out, however, that the commission has yet to prove it is willing and able to bring results in new attacks, particularly those that may implicate people currently in power.

The “federalisation” approach allows federal or central government investigative bodies to step in following attacks on freedom of expression where local state authorities are viewed as weak or compromised. As Bertoni wrote: “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.”¹⁶³ This approach was initiated in Mexico in 2010 and is still evolving there.

Such an approach may be useful in countries where state cohesiveness or decentralization is an issue, and where the central institutions have the capacity and resilience to perform that role.

Considered by FoE groups as one of the most dangerous places in the world to be a journalist, Mexico has seen at least 47 murders since 2012, according to ARTICLE 19.¹⁶⁴ It also has a near complete record of impunity in media killings. After sustained advocacy by the FoE community, Mexico began taking special measures. In 2010 it established a Special Prosecutor for Attention to Crimes Committed Against Freedom of Expression (FEADLE by its Spanish acronym). However, restrictive conditions on which cases it could take up severely limited its activities. Subsequent legislation in 2012 aimed to rectify this and empowered federal authorities “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.”¹⁶⁵ This gave greater leeway for FEADLE to undertake parallel investigations into state authorities in FoE-related attacks.

Despite these reforms, the agency’s record is not encouraging, according to civil society groups.

Some 99 percent of its cases result in no prosecutions,¹⁶⁶ while less than 12 percent of cases investigated by FEADLE (including non-fatal aggressions) make it to court.¹⁶⁷ Several concerns have been raised by CSOs and representatives from international NGOs since the mechanism was put in place. These include a reluctance to take cases out of the hands

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¹⁶³ Bertoni (2015).

¹⁶⁴ ARTICLE 19 Mexico and Central America (2019).

¹⁶⁵ ARTICLE 19 (2012).

¹⁶⁶ *Ibid.*

¹⁶⁷ Hinojosa et al. (2019).

of state authorities, even when there appears to be a failure of due diligence;¹⁶⁸ cases it does attract it often does so slowly, losing a crucial post-attack window for evidence and witnesses while taking time to determine the attack is related to journalism.¹⁶⁹ A lack of human and financial resources has also been problematic.¹⁷⁰

The Philippines, like Mexico, has among the highest numbers of journalists murdered in the world. An overburdened judicial system often characterized as inefficient and subject to corruption and intimidation¹⁷¹ has meant investigations into journalist killings rarely lead to conviction and sentencing.

Over the last 15 years, various administrations have created several bodies focused on attacks against journalists. The most recent is the PTFoMS set up by executive order in 2016 by President Rodrigo Duterte shortly after coming into office. As outlined in Chapter 1, PTFoMS is administered under the Presidential Communications Operations Office but includes participation of most other relevant departments. Similar to the federalisation model, its Manila-based team responds when journalists are attacked, particularly when killings take place, with local authorities observing or participating in the investigation. According to PTFoMS Executive Director, Undersecretary Jose Joel Sy Egco, they review evidence, liaise with police and families, and make recommendations, among other actions.

By its own account, the task force has looked into 101 cases of media killings that have taken place since 2008.¹⁷² PTFoMS determined another 10 cases were not work-related. The Maguindanao Massacre, for which a verdict was announced in December 2019, accounts for another 32 cases. At least four cases were dismissed by courts for lack of probable cause. Task force agents are evaluating another 25 cases in coordination with the prosecutor's office and one has been "resolved".¹⁷³ At least 15 cases have been closed.

In five cases, suspects have been arrested, according to PTFoMS, with warrants issued in another nine. The most recent arrests at the time of drafting this report took place in the case of radio broadcaster Eduardo Dizon, who was shot dead on the night of 10 July 2019 in Kidapawan City, North Cotabato. On 19 September 2019, three men affiliated with a large-scale financial scam being represented as a religious group whom Dizon had criticised were charged with his murder. The accused include the alleged mastermind.¹⁷⁴ By Undersecretary Egco's account, PTFoMS was actively engaged in the case in coordination with local police, including reviewing CCTV footage and witness accounts.¹⁷⁵

Ruperto S. Nicdao, Jr., chairperson of the Association of Broadcasters of the Philippines (KBP by its Filipino acronym) and president of Manila Broadcasting Company, said PTFoMS represents a positive departure from what came before. "At least now there is an office with a mandate and a budget," said Nicdao. "Before there was none." Nicdao also noted that the task force has been active, often arriving on the scene quickly.¹⁷⁶

But many others among the media, press freedom watchdogs and support groups

168 *Ibid.*

169 ARTICLE 19 (2017).

170 Hootsen (2018).

171 Freedom House (2019).

172 These numbers reflect PTFoMS activities through August 2019.

173 *Ibid.*

174 Francisco (2019).

175 Meeting with IMS September 2019 at PTFoMS office.

176 Interview with IMS September 2019 in Manila, the Philippines.



Local policemen position themselves at the gate of Camp Bagong Diwa hours before the court proceedings on the verdict of the Ampatuan Massacre begin on 19 December 2019 in Manila, the Philippines. After a ten-year trial, a judgement was finally handed down after the massacre of 58 people, including 32 journalists, on their way to a local political event at Ampatuan, Maguindanao on 23 November 2009. The victims were rounded up by armed gunmen working for the Ampatuan clan and executed in what is the deadliest single attack on journalists in the world. Photo: Jes Aznar/ Getty Images

are more ambivalent. Although the initiative was welcomed, concerns have been raised in different forums that the task force is not resourced well enough, and that as a presidential task force, it may not endure beyond this administration. Some have said PTFoMS emphasises public relations over case work and that responses to threats, particularly red-tagging, have been sluggish.¹⁷⁷

According to Egco, when it comes to threats, PTFoMS is limited to stepping in only when a communication has been made to its office. Whether PTFoMS promotes judicial accountability or more informally mediates between parties in some of the cases it considers resolved has fallen to question as well.

Many of the criticisms of PTFoMS connect to its foundation within the current political administration. As explored in Chapter 1, PTFoMS' relationship with some media and civil society groups has been confrontational, in part a reflection of the hostile attitude Duterte himself shows towards the press. Re-establishing PTFoMS as an independent, statutory body could potentially address some of its problems.

Witness protection is one area that continues to need strengthening. Prosecutions in the Philippines have relied heavily on the testimony of witnesses who faced intimidation and harassment.¹⁷⁸ In several cases witnesses were murdered or died in questionable

¹⁷⁷ IMS interviews with stakeholders September 2019; Output documents from national consultations that took place November 2018.

¹⁷⁸ Whaley (2015).

circumstances.¹⁷⁹ According to PTFoMS, the 15 cases that it closed were stalled because “vital witnesses are no longer available or can no longer testify, or have died, or for total lack of evidence, or where all possible suspects have already died”.¹⁸⁰ FoE advocates in the country have in the past called for improvements to the witness protection programme.¹⁸¹ In the 2000s, the Freedom Fund for Filipino Journalists, an umbrella group of CSOs formed in 2003, actively worked with prosecutors to bolster protection of witnesses with financial support and advocacy. Their efforts contributed to convictions in the 2005 murder of popular journalist Marlene Garcia-Esperat, among other advances, a testament that multi-stakeholder coordination around this issue bring progress.

Governments in some countries have implemented other measures that are not stand-alone mechanisms dedicated to prosecutions, but do include steps to address impunity and improve coordination among various governmental bodies.

In 2016, Afghanistan set up the Joint Committee for the Safety and Security of Journalists (JCSSJ) to bring together representatives from media support groups, representatives from different sections of governments and security institutions to implement measures to improve SoJ. Since its formation, the Attorney General has prosecuted more than 60 cases of violence against journalists, including suspects in two journalist killings, both of which took place in 2018,¹⁸² a modest mark of progress amid high levels of impunity and violence against journalists in Afghanistan. Judicial proceedings took place behind closed doors, however, and resulted in death sentences, raising concerns by human rights groups over transparency and fairness.¹⁸³

In Pakistan, a draft bill to promote safety of journalists has been under review by Parliament for several years. The legislation establishes a safety fund, and designates safe houses and compensation for families of journalists who die on the job. To address impunity, it appoints a special prosecutor to investigate crimes against journalists.¹⁸⁴ FoE advocates have long advocated for laws to address the media’s safety concerns, but say drafts of the bill fail to address the full scope and complexity of Pakistan’s impunity problem.¹⁸⁵ One risk of establishing a special prosecutor, said Asad Baig of the Islamabad-based group Media Matters for Democracy, is that “it could add another layer of ineffective bureaucracy”.¹⁸⁶ Baig has suggested alternative structures with more independence be considered.

Several countries have introduced transitional justice processes in post-conflict environments where widespread abuses have taken place by state and non-state actors. A handful of crimes against journalists have been addressed through these systems to varying degrees of satisfaction. Under Colombia’s Law of Justice and Peace, which gives leniency to members of armed groups in exchange for demobilisation and confessions, a former paramilitary fighter confessed to killing radio commentator José Emeterio Rivas in 2003. The confession implicated three former public officials in orchestrating the crime, leading to their convictions.¹⁸⁷

179 Witchel (2014).

180 PTFoMS (2018).

181 CMFR (2011).

182 Tolo News (2019).

183 CPJ (2019).

184 Toppa (2016).

185 Ghazi (2017).

186 Interview with IMS by Skype, September 2019.

187 Global Freedom of Expression (n.d.).

In 2019, a harrowing public account by a military officer to The Gambia's Truth, Reconciliation and Reparations Commission told of how the officer was part of a team sent to assassinate journalist Deyda Hydara in 2004 under the orders of then-president Yahya Jammeh. It is uncertain, however, whether Jammeh, who is in exile in Equatorial Guinea, will ever face justice. Human rights activists and Hydara's family have described the process as more traumatic than healing at this stage¹⁸⁸ and said there remains a long fight for full justice¹⁸⁹.

Meanwhile, Sri Lanka's commitments to the HRC to set up transitional justice mechanisms have gone largely unfulfilled, along with hopes that cases of journalists assaulted, killed or disappeared during and shortly after the end of Sri Lanka's civil war will finally be prosecuted. In 2019, the government reinstated a military intelligence official whose unit was accused of attacks on at least three journalists, including the murder of editor Lasantha Wikrematunge.¹⁹⁰

New models needed for international mechanisms

The right to justice through fair and effective investigations and prosecutions and ending impunity in journalist attacks have been established as clear obligations to upholding freedom of expression and are articulated in various documents throughout regional bodies and the UN system. However, existing international tools to advance justice are limited.

Regional bodies offer some channels that can address impunity. In June 2019, for example, the Parliamentary Assembly of the Council of Europe issued a resolution demanding its member state Malta set up an independent public inquiry into the 2017 murder of journalist Daphne Caruana Galizia. The resolution cited "extreme weakness of its [Malta's] system of checks and balances" and called on Maltese law enforcement bodies to investigate those "involved in or benefiting from the scandals exposed by Daphne Caruana Galizia and her colleagues".¹⁹¹ Malta launched the inquiry in September 2019, though her family and FoE advocates have since raised concerns regarding the impartiality of the panel.¹⁹²

Regional courts have made important decisions highlighting the failures of investigations into journalist killings. The most recent such ruling was issued by the European Court of Human Rights in 2018 on the murder of renown journalist Anna Politkovskaya in 2006 and stated that Russia "had failed to take adequate investigatory steps to find the person or persons who had commissioned the murder".¹⁹³ States often fail to comply with these decisions, however, and there are few means to compel them.

At the UN HRC two tools are in place to engage on human rights issues: the Universal Periodic Reviews (UPR) and the system of Special Procedures. The UPR process, which puts member states through a five-year review of their human rights records, often raises issues around impunity in attacks against journalists and in some instances, states

188 The Stream (2019).

189 Quintal (2019).

190 Human Rights Watch (2019).

191 Parliamentary Assembly of the Council of Europe (2019b).

192 Garside (2019).

193 European Court of Human Rights (2018).

commit to action. The HRC's Special Procedures includes special rapporteurs and expert working groups. Rapporteurs, depending on their geographic or thematic mandates, can raise and report on the status of justice in individual cases or patterns of impunity in different countries.

UNESCO, the UN agency mandated with promoting freedom of expression, in addition to coordinating implementation of the UN Plan of Action, biennially publishes "The Safety of Journalists and the Danger of Impunity: Report by the Director-General". For the report, the Director-General requests information from Member States on the status of judicial enquiries into the killings of journalists, creating a regular mechanism for states to report on progress or lack of justice in journalist killings. In addition, they are asked to provide information on special measures they have taken

to address impunity. One positive trend that has emerged since the report was first introduced in 2008 is an increase in the number of responses from member states.¹⁹⁴

These mechanisms help build and sustain political pressure for accountability among states, but there is no established practice in place through which the UN can mobilise and investigate following a serious attack on freedom of expression. This was among the key conclusions of Special Rapporteur on extrajudicial, summary or arbitrary executions, Agnès Callamard, following her office's inquiry into the murder of Jamal Khashoggi.

In January 2019, Callamard, under the terms of her mandate, opened a special human rights investigation into Khashoggi's killing. In her report, presented to the HRC in June 2019, she criticised initial investigations into the killing by Saudi and Turkish officials for failing to meet international standards and concluded that the murder of Khashoggi was an "extrajudicial execution, for which the State of Saudi Arabia is responsible for under international human rights law".¹⁹⁵

The report notes a "troubling" lack of effective international responses to the murder and that the killing of Khashoggi constitutes an international crime over which states should claim universal jurisdiction.¹⁹⁶ In remarks at the UN General Assembly in September 2019, she further criticised the UN for failing to play a "meaningful role" or "act in a meaningful fashion".

Among her 41 recommendations, Callamard called on the HRC, the Security Council or the UN Secretary-General to conduct an international follow-up criminal

“... there is no established practice in place through which the UN can mobilise and investigate following a serious attack on freedom of expression.”

194 UNESCO (2018c), p. 133.

195 UN HRC (2019a), para. 235.

196 UN HRC (2019a), para. 422.



Media and jail personnel take photos from a TV screen of the Ampatuan Massacre trial proceedings, which only the government owned media was granted to cover on 19 December 2019 in Manila, the Philippines.
Photo: Pool/Getty Images

investigation for the purpose of determining individual liability and identifying options towards judicial accountability. The necessity, argued Callamard, is that a criminal investigation convening relevant experts can go further than a human rights investigation, such as she undertook.¹⁹⁷ “This human rights inquiry is not a substitute for a criminal investigation nor is it a court of law,” she wrote.¹⁹⁸ The international criminal investigation should conclude with proposals towards judicial accountability, such as the establishment of an extraordinary ad hoc tribunal or a hybrid tribunal, according to Callamard.¹⁹⁹

Beyond the Khashoggi case, Callamard pointed to several ways forward for acting against impunity, emphasising that this inquiry should not be a “one-off”. One is for HRC Special Procedures to develop a Protocol on the Investigation and Responses to Threats and Risks based on a comprehensive review of laws and best practices regarding the investigation, assessment and/or responses to threats against, and risks faced by, journalists, media workers and human rights defenders.

What has been drawing attention, however, is her proposal to establish “a standing instrument for the investigations of violent crimes against journalists, human rights defenders and other activists and dissidents targeted for the peaceful expression of their opinions”.²⁰⁰

197 UN HRC (2019a), para. 428.

198 Ibid.

199 Ibid., para. 473.

200 Ibid., Section VII, iii.

Such an accountability mechanism would focus on improving investigations by collecting and analysing evidence of targeted killings or disappearances; preparing documentation that can facilitate and expedite fair and independent criminal proceedings and identifying other mechanisms for delivery of justice and ending impunity.²⁰¹ It would either support national actors or operate as an independent international inquiry. The shape and form of such a mechanism may need to be tested, Callamard said.

Another response Callamard envisions outside of a criminal investigation would be a rapid response mission that puts Rapporteurs along with members of civil society or other stakeholders such as UNESCO on the ground following a targeted attack to observe the national investigatory team. “We really need to be open minded as to what the other stakeholders can do,” said Callamard in an interview with IMS. The role of such a team, she explained, is not just to put governments on notice, but give support. “We are monitoring, but we are also prepared to help,” she posited.

Official reactions have been reticent towards her recommendations, but they are taking hold within the FoE community. The UK’s Foreign and Commonwealth Office (FCO) launched a global campaign for media freedom in 2019. Among its core activities is convening a panel of legal experts, led by prominent human rights lawyer Amal Clooney. In her remarks at the FCO’s Global Conference for Media Freedom in June 2019, and again speaking at a ministerial meeting at the UN General Assembly in September 2019, Clooney concurred there is a need to fill the gap in international systems of protection when it comes to investigations and included “the deployment of an international team to investigate attacks on journalists when the state authorities are unwilling or unable to act” among five priorities she will recommend to the FCO campaign.²⁰²

The initial steps of trialling this mechanism are underway in the wake of a November 2019 IMS mission to The Gambia. In an effort to support a mechanism to address impunity based on the recommendations of Callamard’s June 2019 HRC report,²⁰³ IMS launched a pilot in Banjul focused on the first part of this triple-fold mechanism: A Global Protocol for threat investigations by states. The development of this Global Protocol will involve a comprehensive gender-sensitive and international review of best practices regarding the investigation, assessment and responses to threats to underlying national and international legal framework, including laws and jurisprudence.

In this new approach to hold perpetrators of attacks, killings and disappearances of journalists, media workers and human rights defenders to account, IMS sought legal expertise on the roster of Justice Rapid Response (JRR), an organisation established to fight the issue of impunity globally, to carry out the review as it pertains to the criminal justice system and human rights issues in The Gambia. The culmination of this mission will report on the function of mechanisms presently in place in The Gambia to address threats to journalists, media workers and human rights defenders and specific priority gaps to target to support their development.

On this mission, IMS staff and two JRR consultants met with lawyers, government officials, police personnel and other key players including the Truth, Reconciliation and Reparations Commission investigating the Yahya Jammeh era from 1994 to 2017, the

201 *Ibid.*, para. 470.

202 Doughty Street Chambers (2019).

203 UN HRC (2019b), para. 75.

Gambia National Human Rights Commission and the Gambia Press Union. Its final report will feed into the creation of an investigative mechanism simultaneously taking into consideration both criminal and human rights legal frameworks to address threats against journalists, media workers and human rights defenders.

One of the other tools Clooney and Callamard cite are targeted sanctions against media freedom abusers. These have been levied by some countries against suspects in Khashoggi's murder, but legislation facilitating sanctions against individuals responsible for corruption and human rights abuses has been gaining traction more broadly in recent years. What are often referred to as Magnitsky laws after Sergei Magnitsky, the Russian lawyer who died in custody after exposing high-level corruption in 2009, have been in place in the United States since 2012,²⁰⁴ and have since been introduced in several other countries. Human rights activists are currently campaigning for an EU individual sanctions mechanism.²⁰⁵

Under the US Magnitsky laws (the Sergei Magnitsky Rule of Law Accountability Act of 2012 and the Global Magnitsky Human Rights and Accountability Act of 2016), foreign individuals or entities such as corporations responsible for gross violations against rights defenders can be subject to visa bans and have their United States-based assets frozen.²⁰⁶ Dozens of individuals and entities have been designated, including several figures believed to be behind major violations against journalists, such as Chechen leader Ramzan Kadyrov, former President of The Gambia Yahya Jammeh and the Guatemalan lawmaker behind the murder of Danilo López.²⁰⁷

In Khashoggi's case, the United States government sanctioned 17 Saudi government officials in November 2018 for their role in planning and carrying out the murder.²⁰⁸ United States senators also triggered a provision in the Global Magnitsky Act demanding that the president formally attribute blame for the killing, though President Trump has to date ignored the request. Canada, the United Kingdom, France and Germany have also issued some targeted sanctions against Saudi officials in connection to the killing. No individual sanctions have gone as far as to include Saudi Crown Prince Mohammed Bin Salman.

While Magnitsky laws are generally a welcome tool to FoE groups,²⁰⁹ Callamard has warned in her report and other interviews that they may act as "a smokescreen," putting responsibility on those individuals rather than the state. "The current sanctions fail to address the central questions of chain of command and of senior leadership's responsibilities for and associated with the execution," she wrote.²¹⁰

204 United States Congress (2012); United States Congress (2016). The 2012 law applied only to Russian nationals. In 2016, the Global Magnitsky Human Rights and Accountability Act was adopted in the United States, allowing for all foreign nationals to be considered for sanctions.

205 Reporters without Borders (2019b).

206 United States Congress (2016).

207 United States Department of the Treasury (2017).

208 United States Department of the Treasury (2018). The individuals were sanctioned under Executive Order (E.O.) 13818, which builds upon and implements the Global Magnitsky Human Rights Accountability Act.

209 Witchel (2018).

210 OHCHR (2019).

Collaborative investigations

One of the strategies that is increasingly being employed in different parts of the world is collaborative journalism with the aim of completing the work of fallen colleagues and finding answers behind their killings.

The approach is not new. The first instance was in 1976 when more than three dozen journalists came together in Arizona, USA to finish reporting on organised crime by murdered journalist Dan Bolles. The endeavour came to be known as the Arizona Project. Many years later, following the 2007 murder of Chauncey Bailey in California, local reporters launched the Chauncey Bailey Project to continue his investigations into a local business and gauge connections this work could have to his murder. They uncovered evidence that eventually led to the conviction of Bailey's killers.

With technology creating more opportunities for collaborative journalism and cross-border investigations, several more "Projects" have been launched. Among them is the Daphne Project, which draws on the work of 45 journalists from 15 countries "to try to get to the bottom of the many leads the formidable woman left behind," according to the Organized Crime and Corruption Reporting Project, a partner in the project, which is coordinated by Forbidden Stories.

The resulting work pays tribute to brave journalists who paid the ultimate price, but the intended impact is also preventative – to show that killing a journalist does not silence them. "The desired effect [of violence] is to scare off others from investigations," said Mathew Caruana Galizia, Daphne's son and a journalist speaking on a panel at the Global Conference for Media Freedom in London in June 2019. "The project has a deterrent effect because it raises the price for murdering a journalist."

Some projects focus on pursuing the journalist's investigations while others are designed to shed light on the killing itself. Often the two are interlinked. Another Forbidden Stories project pieces together the unfinished work and looks at the unresolved questions behind the murder of a three-person media team on the Colombia-Ecuador border.

Colectivo 23 de Mayo, a group of Mexican and international reporters launched "Project Miroslava," an investigation into the 2017 killing of Mexican journalist Miroslava Breach. Among their findings is that threats against Breach by drug trafficking gangs had not been investigated prior to her killing and authorities have not pursued several aspects of the murder.