



Communication and
Information Sector

United Nations
Educational, Scientific and
Cultural Organization

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

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Background paper - September 2015

Published in 2015 by the United Nations Educational, Scientific and Cultural Organization,
7, place de Fontenoy, 75352 Paris 07 SP, France

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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.²

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2 The definition of “journalist” does not have a broad consensus. However, 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. This is also echoed in the 2013-2-14 Implementation Strategy of the UN 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.

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.³

According to figures from the Committee to Protect Journalists (CPJ), 1,139 journalists have been killed since 1992 worldwide.⁴ 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.⁵ Murder here is defined as "a deliberate attack against a specific journalist in relation to the victim's work."⁶ 660 of these cases were never investigated.⁷

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.⁸ In 96% of those 66 cases, there were no convictions whatsoever. In 2004, 61 cases were confirmed, with 69% of deaths resulting in no convictions⁹. 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.¹⁰ 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

3 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

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

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

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

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

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

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

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

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.¹¹ Below is a list of the 20 deadliest countries from 1992 to 2015.

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

The contexts above differ, and there are a range of reasons for particular attacks and a range of remedies, 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.¹² The rest were distributed between radio, the internet, and photojournalism. From 2006 to 2013, 41% of journalists

11 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.

12 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.

killed worked in print media, 26% worked in television, and 21% in radio¹³. Almost all (94%) of these journalists worked local circuits and were male.¹⁴

Female journalists, however, frequently face other forms of persecution, such as harassment, threats, and rape.¹⁵ A 2013 study of 1,000 women working in media found that about 66% had experienced some sort of intimidation throughout their career.¹⁶ 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."¹⁷ 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,

*"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."*¹⁸

Similarly, the Inter-American Democratic Charter listed freedom of expression and of the press as "essential components of the exercise of democracy."¹⁹ 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

13 UNESCO (2013).

14 UNESCO (2013).

15 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/>.

16 IWMF (2014).

17 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.

18 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.

19 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.

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.”²⁰

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 crimes against journalists in an effort to highlight common themes and potential solutions.²¹

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

20 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

21 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>

the world. . . especially when this has been achieved in the face of danger.”²² 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,²³ the Medellin Declaration on Securing the Safety of Journalists and Combating Impunity,²⁴ the Carthage Declaration, which stresses the importance of a “free and safe environment” for media workers,²⁵ the San José Declaration, entitled Safe to Speak: Securing Freedom of Expression in all Media,²⁶ the Paris Declaration on the Post-2015 Development Agenda, which encourages the international community to consider journalist safety when developing aid programs,²⁷ and, most recently, the Riga Declaration of 2015, entitled Let Journalism Thrive! Towards Better Reporting, Gender Equality, and Media Safety in the Digital Age.²⁸

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.”²⁹ 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.³⁰ 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.³¹

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 Safe-

22 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/>.

23 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/worldpressfreedomday2009000000/belgrade-declaration/>.

24 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/worldpressfreedomday2009000/medellin-declaration/>.

25 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.

26 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>.

27 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.

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

29 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.

30 Id.

31 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.

ty of Journalists and the Danger of Impunity every two years since 2008.³² In alternate years, the UNESCO World Trends in Freedom of Expression and Media Development, provides an analysis of press freedom, safety and impunity.³³

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.³⁴ It has recently developed Journalists’ Safety Indicators to track changes in and facilitate analysis of media safety worldwide,³⁵ and it holds safety and risk awareness trainings for journalists and other media workers.³⁶

Additionally, in 2008, UNESCO co-authored the Charter for the Safety of Journalists Working in War Zones or Dangerous Areas with Reporters Sans Frontieres.³⁷ 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.³⁸

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.³⁹ 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.⁴⁰ 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.

32 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/>.

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

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

35 UNESCO; “Journalists’ Safety Indicators,” available at <http://www.unesco.org/new/en/communication-and-information/freedom-of-expression/safety-of-journalists/journalists-safety-indicators/>.

36 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.

37 UNESCO (2012); “UN Plan of Action,” supra note 30, at para. 1.10.

38 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/>.

39 UNESCO (2012); “UN Plan of Action,” supra note 30.

40 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>.

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.⁴¹ It also calls for preventative measures to 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.⁴²

UN Security Council Resolution 1738, adopted in 2006, condemns attacks and violence against media professionals, and civilians more generally, in conflict situations.⁴³ 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.⁴⁴ 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.⁴⁵

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.⁴⁶ 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.⁴⁷ 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.”⁴⁸

41 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?symbol=A/RES/68/163&referer=http://www.un.org/es/ga/68/resolutions.shtml&Lang=E>.

42 Id.

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

44 Id.

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

46 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>.

47 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>.

48 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/RegularSessions/Session27/Pages/ListReports.aspx>.

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.⁴⁹ The report makes several recommendations 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.⁵⁰

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,⁵¹ the Special Rapporteur on extra-judicial, summary, or arbitrary execution,⁵² the Special Rapporteur on torture,⁵³ and the Special Rapporteur on the situation of human rights defenders.⁵⁴

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.”⁵⁵

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:

49 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.

50 Id.

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

52 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.

53 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.

54 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.

55 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>.

“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 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.”⁵⁶

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.”⁵⁷

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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.⁵⁸ 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.”⁵⁹

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.”⁶⁰ It emphasized states' obligations to investigate violations of the right to life under the Inter-American System and made rec-

56 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.

57 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.

58 *Id.* at para. 334.

59 *Id.* at para. 285.

60 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.

ommendations for eliminating impunity in the future.⁶¹ These recommendations include ending delays in evidence-gathering and investigation, providing security for witnesses, family members, prosecutors, attorneys, and judges, and guaranteeing that sentences are carried out once imposed.⁶²

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.⁶³

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*.⁶⁴ 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.”⁶⁵ 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.”⁶⁶

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.⁶⁷ 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.”

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 journalists should also encompass protections for “‘citizen journalists’, bloggers, social media activists and human right defenders.”⁶⁸ The Council committed

61 “Special Study on the Status of Investigations into the Murder of Journalists,” *supra* note 55.

62 *Id.* at para 146.

63 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.

64 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>.

65 *Id.* at para. 5.

66 *Id.* at para. 8.

67 *Id.* at para. 11.

68 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->

to implementing the UN Plan of Action and promoting legislation to facilitate the investigation and prosecution of these crimes.⁶⁹ It also pledged to encourage its member states to ensure effective investigations and allow international observers to monitor progress of trials.⁷⁰

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.”⁷¹ 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.”⁷² 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.⁷³ 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.⁷⁴

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”.⁷⁵ 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 journalists and other violent attacks against them, so as to end the culture of impunity.⁷⁶

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 Hy dara, as com-

online-and-offline: para. 5.

69 Id. at paras. 29-31.

70 Id. at para 29.

71 *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>.

72 Id.

73 Id. at para. 44.

74 Id. at para. 71.

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

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

pensation 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.⁷⁷

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.⁷⁸

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.⁷⁹ It outlines relevant principles and obligations under international law, and it provides standards and guidelines for ensuring independent, timely, and effective investigations.⁸⁰

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.⁸¹ 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 deprive society of the right to know the information that journalists obtain.”⁸² 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.”⁸³

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

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

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

79 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>.

80 Id.

81 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&IID=1>.

82 Id.

83 Id.

enforcement officers and members of the judiciary, and more thorough monitoring of threats against journalists.⁸⁴

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.”⁸⁵

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.⁸⁶ In 2009 the name was changed to the Special Prosecutor’s Office for 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.⁸⁷

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.⁸⁸ The office now has 9 circumstances in which it has the right to assert its jurisdiction:

84 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.

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

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

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

88 Article 19 (24 March 2015); “Estado de Censura,” Mexico, available at https://www.scribd.com/fullscreen/259296791?access_key=key-JhKvY074E7oZJq11HX0F&allow_share=true&escape=false&view_mode=scroll.

- (1) When there is evidence of involvement by a public servant in the crime,
- (2) When the victim says a public servant is allegedly responsible,
- (3) In case of serious crimes classified by law,
- (4) When the life or physical integrity of the victim is under real danger,
- (5) Upon request from the relevant federal authority,
- (6) When the constituting facts of the crime have an important impact on exercising the right to information or freedom of expression or press,
- (7) 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,
- (8) When the offense transcends the scope of one or more federal authorities, and
- (9) 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.⁸⁹

The federalization of crimes against journalists, detailed below, was also passed in 2012 to expand FEADLE's jurisdiction, which is only regarding federal crimes.⁹⁰ 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 2014.⁹¹ 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.⁹² The head of FEADLE is Special Prosecutor Laura Borbolla.⁹³

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.⁹⁴ The government of Guatemala initially signed an agreement with the UN in 2004 that contained provisions for establishing the Commission for the Investigation of Illegal Groups and Clandestine Security Organizations.⁹⁵ 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 2006.⁹⁶ CICIG was not ratified by Congress until August 2007, however, because the program needed to be significantly redesigned after the Supreme Court found the

89 Id at 118. Translations are my own.

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

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

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

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

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

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

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

commission to be in violation of the exclusive constitutional delegation of power to the Attorney General's Office to prosecute cases, among other issues.⁹⁷

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.⁹⁸ The commission is headed by a Commissioner and includes 5 units: the Commissioner's Office, Investigations' Office, Litigation, Human Resources and Security.⁹⁹ 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.¹⁰⁰ The current Commissioner of CICIG is Ivan Velasquez of Colombia, appointed by the Secretary-General of the UN on August 31, 2013.¹⁰¹

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.¹⁰² 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.¹⁰³ 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.¹⁰⁴ 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.¹⁰⁵ To that end, the commission has been involved in several high profile cases, including most recently a customs fraud ring that led to the arrest of 22 people.¹⁰⁶

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 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.¹⁰⁷ The commission has also signed agreements of collaboration with Comptrollers' Office, Superintendence of Banks, First Lady's Works Secretariat, Office for the Defense

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

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

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

100 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>.

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

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

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

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

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

106 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/guatemalas-president-gives-cicig-extension-a-green-light/>.

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

of Indigenous Women, Presidential Secretariat for Women, Tax Administration Bureau, Ministry of Interior, UNIFEM, UNICEF, and UNODC.¹⁰⁸

The commission's mandate is renewable every two years and currently set to expire on September 3, 2015.¹⁰⁹ In early 2015, President Otto Perez Molina appointed a committee to examine whether Guatemala still needed the CICIG.¹¹⁰ 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.¹¹¹ Their report,¹¹² 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.¹¹³ The UN has expressed a willingness to continue the efforts of the CICIG.¹¹⁴

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."¹¹⁵ 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.¹¹⁶ Brazil is another country that has been considering federalization legislation as violence has been increasing.¹¹⁷ In March 2014, Chief of the Human Rights Secretariat to the Presidency said federalization of crimes

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

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

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

111 *Id.*

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

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

114 *Id.*

115 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>.

116 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>.

117 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>.

against journalists would be included in reforms of Law 10.466/2002.¹¹⁸ 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.

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.¹¹⁹

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 in-

118 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/>.

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

ternational 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.

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.¹²⁰ 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.¹²¹ 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 January¹²² as well as a total of \$57.422.058.541,00 pesos of additional funds in April.¹²³

Law 199/95 established the original regulatory framework and Decree 1592/2000 created the program specifically for protecting journalists.¹²⁴ 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.¹²⁵ Since 2000, the program has been restructured several times culminating in the most recent reformations via Decree 4065/2011¹²⁶ and Decree 4912/2011.¹²⁷ 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.¹²⁸

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.¹²⁹ The Director General of UNP attends the committee's meetings, but has no vote.¹³⁰ Until December 2014, the Di-

120 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>.

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

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

123 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%20de%202015.pdf>.

124 CELE (2012), supra note 78, at 45.

125 CELE (2012), supra note 78, at 53.

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

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

128 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.

129 Decreto 4065, supra note 84, at 2.

130 Id at 3.

rector General resigned at the request of the president due to criticism regarding his financial management of the organization.¹³¹ His successor does not, however, have experience in the public sector, security or human rights.^{132 133}

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.¹³⁴ 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.¹³⁵ Furthermore, the permanent invitees are a delegate from the Attorney General's Office¹³⁶, 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.¹³⁷ The CERREM has always been notable for the key involvement of civil society in this process.¹³⁸

Another example of a protection program implemented in Latin America is the Mechanism to Protect Human Rights Defenders and Journalists¹³⁹ (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.¹⁴⁰ On July 7, 2011 President Felipe Calderon and UN 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.¹⁴¹ Congress passed a supporting law on April 30, 2012 and the Mechanism became operative in November 2012.¹⁴²

131 (19 January 2015); "Diego Fernando Mora, nuevo director de la Unidad Nacional de Proteccion," Colombia, available at <http://www.noticiascrcn.com/nacional-pais/diego-fernando-mora-nuevo-director-unidad-nacional-proteccion>

132 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/>.

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

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

135 Id at 23-24.

136 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."

137 Decreto 4912, supra note 85, at 24.

138 CELE (2012), supra note 78, at 50.

139 Also has been referred to as the Committee to Protect Journalists.

140 Washington Office on Latina America (WOLA) (January 2015); "The Mechanism to Protect Human Rights Defenders and Journalists in Mexico: Challenges and Opportunities," Washington, 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>.

141 Id at 9.

142 Id at 9.

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.¹⁴³ Collectively these units receive requests for protection, process these requests by conducting a risk analysis, and grant measures in necessary cases.¹⁴⁴ A National Executive Coordinator is responsible for coordinating actions among the different areas of the Mechanism.¹⁴⁵ 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.¹⁴⁶ The Governing Board is chaired by an Interior Ministry representative.¹⁴⁷ 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.¹⁴⁸

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.¹⁴⁹ 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.¹⁵⁰ 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.¹⁵¹ The Mechanism also maintains a series of safe houses throughout the country.¹⁵²

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).¹⁵³ 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

143 Id at 8-9.

144 Id at 8-9.

145 Id at 9.

146 Id at 9.

147 Id at 9.

148 Id at 10.

149 Id at 1-2.

150 Id at 2.

151 Id at 3-4.

152 Id at 4.

153 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>.

of the State Security Office.¹⁵⁴ ¹⁵⁵ The law also creates a Special Protection Fund funded by resources from the security tax.¹⁵⁶

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.¹⁵⁷ 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.¹⁵⁸ The UN High Commissioner of Human Rights is also invited, but neither he nor the National Human Rights Commissioners have a vote.¹⁵⁹

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.¹⁶⁰ 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.¹⁶¹ These risk evaluations, which are to be re-evaluated every 6 months, are then presented to the Protection System Administration for implementation.¹⁶² 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.¹⁶³ Necessary measures of prevention and protection may include assigning a security team in serious cases and evacuation or relocation in the most extreme cases.¹⁶⁴

154 Decreto 34-2015. Available at <https://focus.protectionline.org/es/2015/06/23/ley-protection-honduras/>.

155 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 Secretaría de Estado en el Despacho de Seguridad.

156 Orellan (2015), *supra* note 111.

157 Decreto 34-2015, *supra* note 112, at 9, 11.

158 *Id* at 9-10.

159 *Id* at 10.

160 *Id* at 13.

161 *Id* at 13.

162 *Id* at 13.

163 Decreto 34-2015, *supra* note 112, at 14.

164 (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/>.