

**INDEPENDENT HIGH LEVEL PANEL OF LEGAL EXPERTS ON  
MEDIA FREEDOM**

Appointed by the Lord Neuberger of Abbotsbury at the request  
of the Governments of the United Kingdom and Canada



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# **Report on Providing Safe Refuge to Journalists at Risk**

*Drafted by:* Mr. Can Yeğinsu

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Member of the High Level Panel of Legal Experts on Media Freedom

This IBAHRI publication is a report of the High Level Panel of Legal Experts on Media Freedom, authored by Panel Member, Can Yeğinsu of 4 New Square Chambers, Columbia Law School, and Georgetown University Law Center.

**The High Level Panel of Legal Experts on Media Freedom** is an independent body comprised of fifteen internationally renowned lawyers and jurists that was convened in July 2019, by Lord Neuberger of Abbotsbury, at the request of the UK and Canadian governments. The Panel's remit is to provide advice and recommendations to governments, including to the members of the Media Freedom Coalition, with a view to preventing and reversing abuses of media freedom around the world.

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*Case Study Images:*

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Esraa Abdel Fattah (Case Study VI) – [The Independent](#)

Patricia Poleo (Case Study VII) – [Wikipedia](#)

Sohail Khan (Case Study VIII) – [Pakistan Press Foundation](#)

Humayra Bakhtiyar (Case Study IX) – [Index on Censorship](#)

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# Report on Providing Safe Refuge to Journalists at Risk

**An International Bar Association Human Rights Institute Report**

**23 November 2020**

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*With the executive summary and recommendations endorsed by the members of the High Level Panel of Legal Experts on Media Freedom:*

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# Endorsements



*Ms. Irene Khan,  
UN Special Rapporteur on the promotion and protection of freedom of opinion and expression*



*Professor Pedro Vaca Villarreal,  
Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights*



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Committee to Protect Journalists



People deserve to know



## Executive summary

1. Every year, scores of journalists<sup>1</sup> are forced to leave their countries to escape threats to their safety,<sup>2</sup> threats that have arisen because they have performed their duties, as journalists, to report the truth and to inform the public.
2. Leaving their home countries, at least while a threat to their safety exists, is all too often the *only* way for these journalists to avoid politically motivated harassment, kidnapping, incarceration, violence or even assassination. It is not a decision taken lightly, nor is it one motivated by a desire to relocate permanently: the wish to move is driven by necessity. As it was for:
  - Pakistani journalist **Taha Siddiqui**, ambushed in Pakistan by armed men and beaten due to his reporting on Pakistan's powerful military establishment.<sup>3</sup> Mr. Siddiqui now lives and works in France.
  - Venezuelan journalist **Patricia Poleo** whose offices were attacked with explosives a day after she published a video reporting on various communications between the Venezuelan military and Colombian guerrilla groups.<sup>4</sup> Ms. Poleo now lives and works in the United States.
  - Turkish journalist **Can Dündar** whose editorial decision to publish footage of the State intelligence agencies allegedly conveying weapons to Syrian Islamist fighters led to over 90 days of pre-trial detention, followed by a botched assassination attempt outside of the court in which he was later convicted.<sup>5</sup> Mr. Dündar now lives and works in Germany.
3. These are award-winning journalists and are by no means isolated cases; further examples of journalists left with no choice but to seek safety abroad abound. However, in too many cases the journalists at risk are simply unable to secure safe refuge in time. That can, and has, come at an appalling cost to them and their families. Take the example of 31-year-old Bangladeshi blogger and journalist, **Ananta Bijoy Das**, murdered in Bangladesh around the same time that he was supposed to be in Stockholm for World Press Freedom Day – an engagement he was unable to attend following the refusal of the authorities to grant him a visa to travel.<sup>6</sup>
4. Journalists, who find themselves in the position Mr. Das did before his murder, are often unable to move to safety in time because the pathways open to them are too few in number and those that do exist are too slow, burdensome and difficult to navigate to be capable of providing practical and effective recourse.
5. This Report recommends to members of the Media Freedom Coalition<sup>7</sup> and partner States committed to the protection and promotion of media freedom: (i) the introduction of a new emergency visa for journalists at risk; and (ii) the implementation of a number of essential adjustments to the existing framework for safe relocation.

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1 The term 'journalist' is used in this Report to denote any individual engaging or assisting in journalistic activity: see **Scope, terminology and acknowledgements §22**. While the High Level Panel's mandate relates to the protection and promotion of media freedom, the recommendations contained in this Report would apply with equal force to the provision of safe refuge for human rights defenders who often suffer from materially identical forms of persecution: see **Scope, terminology and acknowledgements** at §25.

2 Statistics from the Committee to Protect Journalists (CPJ) indicate that between 2010 and 2015 CPJ assisted 452 journalists who were forced into exile: see CPJ, 'Syria tops survey of journalists fleeing into exile', 17 June 2015, available online at: <https://cpj.org/2015/06/syria-tops-survey-of-journalists-fleeing-into-exil>.

3 See **Case study XI (Siddiqui)** at p. 48.

4 See **Case study VII (Poleo)** at p. 34.

5 See **Case study II (Dündar and Gül)** at p. 21.

6 See **Case study I (Das)** at p. 17.

7 The Media Freedom Coalition was formed in July 2019 under the leadership of Canada and the UK. It is a partnership of States working together to advocate for media freedom and the safety of journalists and hold to account those who harm journalists for doing their job. At the time of writing, the Coalition has 37 member States: see further, FCDO, 'Media Freedom Coalition: An Overview', 18 August 2020, available online: [www.gov.uk/government/publications/media-freedom-coalition-an-overview/media-freedom-coalition-an-overview](http://www.gov.uk/government/publications/media-freedom-coalition-an-overview/media-freedom-coalition-an-overview).



## *The existing pathways to safety*

6. There are broadly **five** pathways open to journalists at risk:
- (i) **The Conventional Visa.** These are work permits, visas for study, teaching or scholarship, visas recognising ‘*extraordinary talent*’ or visas for fellowship programmes at universities and NGOs (**‘the Non-Humanitarian Pathways’**);<sup>8</sup>
  - (ii) **The Short-Term/Humanitarian Visa.** Such visas are available in a scattering of States and may offer recourse to journalists who seek urgent protection on humanitarian grounds (**‘the Temporary Humanitarian Pathways’**);<sup>9</sup>
  - (iii) **Public-Private Sponsorship Programmes.** These programmes are available in certain States and allow groups of citizens or certain organisations, in partnership with the host State, to take part in the resettlement of refugees, which may include journalists, by acting as sponsors;<sup>10</sup>
  - (iv) **International Protection.** This encompasses the concepts of seeking asylum and refugee resettlement and denotes the legal protection offered by a State to persons who are from other countries in which they are being persecuted and State authorities are unable, or unwilling, to protect their fundamental rights;<sup>11</sup> and
  - (v) **Diplomatic Asylum.**<sup>12</sup> This is where a State takes the exceptional step of granting temporary refuge to a journalist at one of its diplomatic missions or consulates<sup>13</sup> in a foreign territory.

## *The existing obstacles to safety*

7. Each of these pathways involves distinct and diffuse State practices. Each pathway is also beset with its own difficulties and obstacles for the journalist at risk. This Report examines the viability of these existing pathways<sup>14</sup> in the light of the most common risks that journalists face, precipitating the need to leave their home country.
8. On analysis, this Report finds that journalists facing a threat to their safety must contend with some, if not all, of the following **significant general obstacles**<sup>15</sup> to securing relocation and remaining safe:
- o *Delay:* Journalists who require a visa to leave their home countries make up the great majority of cases. The process of applying for and obtaining a visa, however, is almost invariably a lengthy one for the journalist at risk. This is as much a problem for the journalist working for an international news organisation seeking a temporary move to another bureau, as it is for the freelance journalist seeking a move on humanitarian, or other, grounds.

8 See **A. Non-Humanitarian Pathways: work permits, extraordinary talent visas, visas for study, teaching and scholarship or fellowship programmes** from [§78](#).

9 Examples of States that currently offer short-term or temporary pathways to relocate from one’s home country on humanitarian grounds include Germany, Norway and the United States. See further **B. Temporary Humanitarian Pathways: The Short-Term/Humanitarian Visa** from [§101](#).

10 See **C. Public-Private Sponsorship Programmes** from [§136](#).

11 See **D. International Protection** from [§151](#).

12 See **E. Diplomatic Asylum** from [§213](#).

13 Possibly also on board its ships, aircrafts or at its military and para-military installations in that country: see generally, Joanne Foakes and Eileen Denza, ‘Privileges and Immunities of Diplomatic Missions’, in Sir Ivor Roberts (Ed.), *Satow’s Diplomatic Practice*, 7th Ed., Oxford University Press: 2017, pp. 233-237.

14 See **Assessment of the current pathways and impediments to safe refuge for journalists at risk** from [§71](#).

15 See **F. The current pathways: some common obstacles and challenges** from [§220](#).

- *Criminalisation of journalistic activity*: Journalists who find themselves under investigation or indicted for their work in their home country can face enormous difficulties persuading a host State to grant their application for a visa. This can even be so in the clearest cases of politically motivated prosecutions.
  - *Inability to resume journalistic activity*: The minority of journalists who are able to relocate in time before any risk to their safety has eventuated, are very often unable to continue their work as journalists.<sup>16</sup>
  - *Post-relocation threats and issues*: States that choose to persecute journalists very rarely confine their efforts to their own borders. Journalists who have successfully relocated often find themselves subject to a range of measures by their home State: everything from the revocation of, or the refusal to renew, their passports, all the way through to the issuance of extradition requests or INTERPOL Red Notices.
9. There are also difficulties and **obstacles specific** to each of the five pathways.
10. **The Non-Humanitarian Pathways**:<sup>17</sup> Securing a visa for work, teaching, study or research often involves complex and lengthy application processes. A journalist must first secure an offer of work (alternatively, an inter-company or foreign bureau transfer), or a position at an academic institution, before he or she can even start the application process for a suitable visa. This generally requires preparedness on behalf of the journalist months, if not years, prior to any academic programme or employment commencement date. Even after securing such an offer, the visa application processing time can be very lengthy. Journalists at risk simply do not have the luxury of such time.
11. There may be further barriers. Journalists who do not speak a foreign language may be unable to enrol in a suitable course and those who do not have the benefit of scholarships, or support from fellowship schemes, are unlikely to have the financial means necessary to pursue study or research abroad. Journalists may also struggle to find an employer that is willing, or able, to undertake the administrative burden and incur the expense of assisting with their immigration applications. Special ability or talent visas have prohibitively onerous threshold criteria, making their grant extremely unlikely for most journalists.
12. Sometimes it is the persecuting act itself that will serve to thwart the journalist's efforts to secure a visa. For instance, the fact that a journalist is the subject of a criminal investigation or prosecution in their home country will usually constitute a relevant factor in the assessment of their 'good character' (or general security concerns) for the purposes of their visa application. Sometimes, the existence of that factor alone will lead to a suspension or stay of the visa application, pending the outcome of the criminal investigation or proceedings. That can take years and result in a journalist's conviction, sometimes making travel practically impossible. At other times, the fact of an investigation or set of proceedings will lead to an (unchallengeable) outright visa denial.
13. **The Temporary Humanitarian Pathways**:<sup>18</sup> Certain Temporary Humanitarian Pathways can, in principle, provide journalists at risk with a route to safe and timely relocation. States that offer these types of pathways include for example, the United States and a handful of other countries,<sup>19</sup> but, by and large, this category

16 According to statistics, fewer than 20 per cent of journalists are in fact able to resume their journalistic work upon relocation: see CPJ, 'Syria tops survey of journalists fleeing into exile', 17 June 2015, available online at: <https://cpj.org/2015/06/syria-tops-survey-of-journalists-fleeing-into-exil>.

17 See **The key impediments within the current system: Non-Humanitarian Pathways** from §95.

18 See **The key impediments within the current system: Temporary Humanitarian Pathways** from §134.

19 For example, the United States permits those outside the country who are otherwise ineligible for admission to request 'parole' into the United States based on humanitarian grounds or significant public benefit reasons, for a temporary period of time: the Immigration and Nationality Act, Section 212(d)(5), (8 U.S.C. § 1182) (in conjunction with transfer of authority under the Homeland Security Act 2002) allows the Secretary of Homeland Security, subject to some exclusions, to use their discretion to parole an alien applying for admission into the United States temporarily for urgent humanitarian reasons or significant public benefit. In Germany, an applicant may be granted a temporary residence permit for the purpose of admission from abroad in accordance with international law, or on urgent humanitarian grounds under Section 22 of the Residence Act. In Norway, a visa under Section 11 of the Immigration Act may be granted for '*humanitarian reasons, national considerations or international obligations*', for a period of up to three months, even if the applicant does not meet the Schengen requirements. For further detail, see **B. Temporary Humanitarian Pathways: The Short-Term/Humanitarian Visa** from §101.

of visa is *not* commonly available, or at least not in the form that would be effective for journalists at risk. Even amongst those few countries that do offer this type of visa, the number of persons who are granted it are low, and while this pathway can be more expeditious and less costly than some of the alternatives, some States require applicants to provide evidence of financial sponsorship or sufficient funds, a condition that is often very difficult for journalists to fulfil, especially in the face of a fast-evolving threat.

14. **Public-Private Sponsorship Programmes:**<sup>20</sup> Private or community sponsorship on humanitarian grounds is offered by a scattering of States, including Australia, Canada, Ireland, New Zealand, Spain and the United Kingdom. There is, at present, a marked difference in the scope and effectiveness of such programmes amongst the few States that offer them. The majority of these schemes form part of the relevant State's refugee resettlement processes. As in some of the other pathways, the application procedure can be very lengthy and often complex. Journalists must generally have the luxury of time and sometimes the means necessary to find sponsors who are willing, and able, to take on the considerable administrative and financial burdens of sponsorship. Neither luxury is generally available to journalists facing a threat.
15. **International Protection:**<sup>21</sup> Applications for asylum and the identification of refugees for resettlement ordinarily require applicants to be *outside* of their country of origin. If journalists cannot leave their home countries and enter other countries, then it becomes very difficult, if not impossible, for them to make ordinary asylum applications.
16. Even journalists who can travel and are, therefore, able to make an International Protection claim are often faced with the reality that 'International Protection' may in fact offer them no real protection at all. Some problems encountered by journalists here are as follows:
  - In making a claim for protection under the Refugee Convention, applicants must show a well-founded fear of being persecuted in their home country for one of five enumerated reasons.<sup>22</sup> For journalists, the most relevant and applicable two grounds for persecution are '*membership of a particular social group*' and '*political opinion*'.
  - Certain States will, however, only recognise '*membership of a particular social group*' where there is an innate, fundamental or '*immutable characteristic*' that is common amongst its members. In turn, journalists who make claims on this basis may fail simply on the basis that their occupation, as journalists, is capable of change and therefore not an '*immutable characteristic*'.<sup>23</sup>
  - Proceeding on the alternative basis of making a claim of persecution '*for reasons of...political opinion*' is no more straightforward. The law on the issue of whether a journalist has a '*political opinion*' or should be considered '*non-partisan*' is inconsistent across, and sometimes within, different States.<sup>24</sup> The result is that journalists who seek protection on this ground may find their claims rejected for failing to meet this threshold requirement.
  - Non-Refugee Convention protections, such as complementary protection,<sup>25</sup> which may better account for the needs of journalists,<sup>26</sup> are not recognised by all States and, in any event, the actual criteria

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20 See **The key impediments within the current system: Public-Private Sponsorship Programmes** from [§148](#).

21 See **The key impediments within the current system: International Protection** from [§194](#).

22 The five enumerated grounds listed in Article 1 of the Refugee Convention are race, religion, nationality, membership of a particular social group or political opinion.

23 See **The key impediments within the current system: International Protection** at [§199](#).

24 See **The key impediments within the current system: International Protection** at [§201](#).

25 Complementary protection is not a term defined in any international instrument. It is, rather, a phrase that has emerged over the course of the past couple of decades as a description of the practice adopted by some States of providing relief from removal or deportation to asylum applicants who have failed in their claim for refugee status under the Refugee Convention. Other terms used to refer to the same practice are, for example, '*subsidiary protection*', '*temporary asylum*' or '*humanitarian protection*'; see generally **D. International Protection** from [§160](#).

26 I.e. because there would be no requirement to make the direct connection between the persecution the journalist faces and one of the Refugee Convention grounds.

adopted by States to delineate the scope of complementary protection in their jurisdictions vary significantly.<sup>27</sup>

- o Those who seek protection through refugee resettlement under the auspices of the United Nations High Commissioner for Refugees (the UNHCR) will be faced with the realities of: (i) a very small number of places available (relative to applications made) each year; and (ii) excessive waiting times.

17. **Diplomatic Asylum:**<sup>28</sup> The legal basis for the species of asylum that a State grants to an individual in its embassy or legation remains controversial. While the practice has a long history in certain Latin American countries, most States do *not* offer this pathway to protection. Even where some form of Diplomatic Asylum is recognised by a State, the discretion to grant asylum itself may in fact be limited by a number of factors.<sup>29</sup> On a more practical level, even a successful application would likely require the journalist to reside within a State's embassy or consulate, meaning that this pathway is not in fact a viable remedy for most journalists who are at risk for an extended period of time.

### **The recommendations**

18. In short, there are today a number of formidable practical and legal obstacles in place for journalists who are left with no choice but to seek safe refuge abroad in the face of a threat at home. And, at present, it is almost exclusively *non*-governmental organisations that bear the tremendous burden of providing essential financial, administrative and logistical assistance to journalists in their quest for safety. There is, however, only so much they can do, especially within the present framework for protection.

19. It is, in reality, States and intergovernmental organisations that hold the keys to safe refuge for journalists at risk. And it is, therefore, to States and intergovernmental organisations that the High Level Panel's following **nine recommendations**<sup>30</sup> are principally directed:

- 1) States should introduce an emergency visa for journalists at risk.
- 2) In the absence of a journalist-specific emergency visa, States should commit to the expedited processing of visa applications received from journalists who are determined to be at risk.
- 3) In the absence of a journalist-specific emergency visa, States should provide an opportunity for journalists at risk making visa applications to provide information on issues of character and security that may arise (as often do for journalists subject to criminal investigation or charges for their work), and ensure that such visa applications are assessed fairly and accurately in the light of that, and other available, information.
- 4) States should commit to granting visas to immediate family members/dependents of journalists at risk who are granted visas.
- 5) States should issue travel documents to relocated journalists at risk if their home countries move to revoke or cancel their passports.
- 6) States should permit refugee protection visa applications to be made by journalists at risk, from within their home State.
- 7) States should make clear in their domestic law that journalists at risk can fall within the definition of a 'refugee' for the purposes of the Refugee Convention, or otherwise qualify for International Protection.

27 See **D. International Protection** from §160 and **The key impediments within the current system: International Protection** from §194.

28 See **The key impediments within the current system: Diplomatic Asylum** from §218.

29 See **E. Diplomatic Asylum** from §213 and **The key impediments within the current system: Diplomatic Asylum** from §218.

30 See **Recommendations** from §244.

- 8) INTERPOL should require States seeking the issuance of a Red Notice to specify whether the subject of the notice sought is a journalist and, if it is, INTERPOL should conduct a robust Article 3 assessment regarding that individual before reaching a decision on whether or not to issue the Red Notice.
- 9) Signatories to the Global Pledge on Media Freedom should nominate 'regional champion' States, for two-year terms, to spearhead efforts in the provision of safe refuge for journalists at risk.
20. Affirming the importance of global media freedom in speeches is not enough. The root evil that underlies so many illegitimate abuses of media freedom is, as evinced in this Report, the ultimate threat of violence to journalists and their families: 'If you write that, we *will* hurt you'.
21. States that believe protecting journalists and championing their work constitutes a vital pillar of a free and democratic society, need to act. Introducing a new emergency visa for journalists at risk and making the essential adjustments recommended in this Report to the existing framework of safe relocation will send a clear message back: 'If you are at risk for what you write, we *will* protect you'.

## Scope, terminology and acknowledgments

22. This Report focuses on the general aspects of visa and immigration systems that are most relevant to the provision of safe refuge for journalists who are at risk in their home countries. The Report does not seek to provide an exhaustive examination of all legal issues relevant to, or arising from, such systems worldwide.
23. The structure of the analysis proceeds as follows:
  - First, the Report sets out the principal reasons underpinning the High Level Panel's decision to focus on this area of media freedom:<sup>31</sup> **Why has this specific issue assumed a critical importance for the protection and safety of journalists today?**
  - Secondly, the Report seeks to outline, in broad terms, the circumstances that precipitate the search for safety abroad: **Why do journalists have to seek refuge outside of their home country?**
  - Thirdly, the Report moves on to set out the main existing relocation routes – the pathways – presently available to journalists at risk, at least in theory, and the very real barriers present within those pathways in practice: **Why is the present system not fit for the purpose of protecting journalists at risk?**
  - Fourthly, the Report draws a number of key conclusions before then making nine recommendations to States and intergovernmental organisations for implementation: **What steps can States take at home, together with international institutions, to strengthen the protections for journalists at risk abroad?**
24. The term 'journalist' is adopted in this Report to mean any individual involved in journalistic activity, thereby engaging the right to freedom of expression in law.<sup>32</sup> The term – and the recommendations in this Report – are *not* confined to accredited journalists.
25. While the High Level Panel's mandate is specifically directed towards the protection and promotion of media freedom and, in particular, securing stronger protections for journalists, it is of note that the recommendations contained in this Report would apply with equal force to the provision of safe refuge for human rights defenders who often suffer from materially similar, if not identical, forms of persecution.<sup>33</sup>
26. In the process of researching and preparing this Report, the High Level Panel has derived great benefit from consulting with, and drawing on the experience and expertise of, the following individuals and intergovernmental organisations, to which the Panel extends its deepest thanks:
  - Ms. Yasmine Ahmed (Executive Director, Rights and Security International)
  - Mr. Yonatan Berkovits (Vice President, Business & Legal Affairs, VICE Media)

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31 See the International Bar Association Human Rights Institute, 'High Level Panel of Legal Experts on Media Freedom: Terms of Reference', 2019, available online at [www.ibanet.org/IBAHRIsecretariat.aspx](http://www.ibanet.org/IBAHRIsecretariat.aspx).

32 See, for example, the judgment of the Court of Appeal (England and Wales) in *R. (Miranda) v. Secretary of State for the Home Department* [2016] EWCA Civ 6, at [60], *per* the Master of the Rolls. This was the case of David Miranda who had been detained at Heathrow Airport and whose journalistic material had been confiscated pursuant to Schedule 7 to the Terrorism Act 2000. Mr. Miranda was not himself a working journalist, but he was assisting in journalistic activity and therefore was extended the specific protections for journalistic activity inherent in Article 10 of the European Convention on Human Rights, as incorporated into English law by the Human Rights Act 1998. The author of this Report acted as counsel for a set of parties in that case before the Divisional Court and the Court of Appeal.

33 See Michel Forst, United Nations Special Rapporteur on the Situation of Human Rights Defenders, 'World Report on the Situation of Human Rights Defenders', December 2018, available online at: [www.protecting-defenders.org/sites/protecting-defenders.org/files/UNSR%20HRDs-%20World%20report%202018.pdf](http://www.protecting-defenders.org/sites/protecting-defenders.org/files/UNSR%20HRDs-%20World%20report%202018.pdf), which examines the situation for human rights defenders in 140 countries over a 12 year period and provides States with specific recommendations on how better to implement the 1998 UN Declaration on Human Rights Defenders; see also, SOAS University of London, 'Centenary Lecture: Hina Jilani, human rights lawyer', 16 March 2017, available online at: [www.youtube.com/watch?v=3q-CwD9SEfK](http://www.youtube.com/watch?v=3q-CwD9SEfK). Ms. Jilani is a former UN Special Representative of the Secretary-General on Human Rights Defenders, and a Member of the High Level Panel.

- Dr. Barbora Bukovská (Senior Director for Law and Policy, ARTICLE 19)
- Dr. Agnès Callamard (UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions)
- The Rt. Hon. Lady Justice Carr (Privy Councillor, Justice of Her Majesty's Court of Appeal)
- Mr. Jason Conti (General Counsel, Dow Jones)
- Prof. Robert Destro (Assistant Secretary, Bureau of Democracy, Human Rights and Labor, US Department of State)
- The Rt. Hon. Lord Justice Dingemans (Vice-President of the Queen's Bench Division, Privy Councillor, Justice of Her Majesty's Court of Appeal)
- Ms. Laura Farris MP (fmr. journalist, Member of Parliament for Newbury)
- Ms. María Salazar Ferro (Emergencies Director, Committee to Protect Journalists)
- Prof. Maureen Freely (Novelist and President, English PEN)
- Ms. Madeline Garlick (Chief, Protection Policy and Legal Advice Section, UNHCR)
- Prof. Joshua Geltzer (Executive Director, Institute for Constitutional Advocacy and Protection, Georgetown University Law Center)
- Ms. Jo Glanville (Journalist, fmr. Director of English PEN)
- Mr. Jacob Goldstein (Assistant General Counsel, Dow Jones)
- Ms. Nani Jansen Reventlow (Director, Digital Freedom Fund, Lecturer in Law, Columbia Law School)
- Ms. Hawley Johnson (Associate Director, Global Freedom of Expression, Columbia University)
- Mr. Anthony Jones (Barrister, 4 New Square Chambers)
- Ms. Karen Kaiser (General Counsel, the Associated Press)
- Ms. Irene Khan (UN Special Rapporteur on the Promotion and Protection of Freedom of Opinion and Expression)
- Ms. Inge De Langhe (Senior Protection Officer, UNHCR)
- Mr. David McCraw (Vice President and Assistant General Counsel, New York Times Company)
- Mr. Ian McDonald (Barrister, 4 New Square Chambers)
- Mr. Sasha Polakow-Suransky (Deputy Editor, Foreign Policy Magazine)
- Dr. Courtney Radsch (Advocacy Director, Committee to Protect Journalists)
- Ms. Randy Shapiro (Global Newsroom Counsel, Bloomberg)
- Mr. Brandon Silver (Director of Policies and Projects, Raoul Wallenberg Centre for Human Rights)
- Mr. Mohammed Shokat (Deputy Co-ordinator, Global Media Freedom, Foreign, Commonwealth & Development Office)

- Mr. Joel Simon (Executive Director, Committee to Protect Journalists)
  - Ms. Valerie Svobodova (Senior Human Rights Adviser, UNHCR)
  - Ms. Rebecca Vincent (Director of International Campaigns, Reporters without Borders)
  - Mr. Antonio Zappulla (CEO, Thomson Reuters Foundation)
27. The author of this Report is also indebted to his colleagues on the High Level Panel of Legal Experts on Media Freedom, and in particular to Professor Irwin Cotler, Chief Justice Manuel Cepeda, Professor Sarah Cleveland, Ms. Hina Jilani and Mr. Nadim Houry whose comments and insights have proven invaluable throughout the process. The author would like to convey his special thanks to the International Bar Association's Human Rights Institute for acting as the Secretariat for the High Level Panel's work and, in particular, for the formidable efforts, patience and support of Baroness Helena Kennedy of The Shaws, Ms. Perri Lyons and Ms. Zara Iqbal.
28. The author is particularly grateful to Ms. Aarthi Sridharan and Ms. Kübra Berberoğlu for their invariably excellent editorial and research assistance for this Report, which has also benefitted from first-class research from Mr. Ömer Kaan Çelik. Finally, the author owes a huge debt of gratitude to the High Level Panel's Deputy Chair Ms. Amal Clooney and ARTICLE 19's Ms. Sarah Clarke, both of whom really did go above and beyond in providing encouragement to the author, together with the benefit of their expert analysis, during the preparation of this Report.



## The critical importance of the issue today

29. Every year, scores of journalists flee their countries to escape threats to their safety: threats that have arisen because they have performed their duties – as journalists – to report the truth and to impart information of public interest. Statistics from the Committee to Protect Journalists (CPJ) indicate that between 2010 and 2015, 452 journalists were forced into exile.<sup>34</sup> Threat of imprisonment (42 per cent) and threat of violence (40 per cent) accounted for the principal two reasons given for fleeing during this period.<sup>35</sup>
30. Those numbers relate, however, only to those cases in which CPJ itself was able to provide assistance to individual journalists through its Journalist Assistance programme.<sup>36</sup> Other similar programmes, including the one led by Reporters Without Borders (RSF), exist.<sup>37</sup> But no consistent or reliable data is available as to the actual number of journalists forced into exile in the past decade. Nor are any reliable figures available on the number of journalists who wish to relocate but cannot, or indeed whether those who have had to depart their home countries were able to bring their families with them. Journalists' families too often become targets of threats and harassment themselves,<sup>38</sup> often more so *after* journalists have successfully departed from their home country.
31. Leaving one's home country, at least for the period of time during which a threat to one's safety exists, is all too often the *only* way open to a journalist to escape politically motivated incarceration or violence, or indeed the sustained threat of either or both. It is never a decision taken lightly, nor is it one motivated by a desire to relocate permanently: the wish to move is driven by necessity and often necessity alone.
32. However, the current pathways open to the journalist who has been left with no choice but to seek to relocate to another country are, at best, slow and difficult to navigate and, at worst, cumbersome and ineffective. This is particularly so where the desire is to move swiftly in the face of an imminent threat.
33. The journalist in that situation must contend with some, if not all, of the following considerable obstacles:
  - **Delay:** Journalists who require a visa to leave their home countries make up the great majority of cases. The process of applying for, and obtaining, a visa, however, is invariably a lengthy one for the journalist under threat. This is as much a problem for the journalist working for an international news organisation seeking a temporary move to another bureau, as it is for the freelance journalist seeking a move on humanitarian grounds.
  - **Criminalisation of journalistic activity:** Journalists who find themselves under criminal investigation or indictment for their work in their home country can face enormous difficulties persuading a potential host State to take into account their particular circumstances and to grant their application for a visa.
  - **Practical impossibility of making an asylum application:** If journalists cannot leave their home countries and enter other countries lawfully, then it may be impossible for them to make asylum applications without first entering potential host countries unlawfully and risking extensive detention.
  - **International Protection may in fact offer no protection to journalists at risk:** Journalists who are able to apply for International Protection are faced with the potential issue that they will not meet

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34 CPJ, 'Syria tops survey of journalists fleeing into exile', 17 June 2015, available online at: <https://cpj.org/2015/06/syria-tops-survey-of-journalists-fleeing-into-exil>.

35 Information derived from CPJ's historic reports and analysis.

36 CPJ, 'What We Do', last accessed October 2020, available online at: <https://cpj.org/emergency-response/what-we-do.php>. The programme dispenses emergency grants to journalists in distress through CPJ's Gene Roberts Emergency Fund.

37 For example, see RSF, 'Individual support', last accessed October 2020, available online at: <https://rsf.org/en/individual-support>. RSF supports journalists with their asylum applications and relocation generally.

38 UNESCO, 'World Trends in Freedom of Expression and Media Development Global Report 2017/2018', 2018, pp. 152 and 157, available online at: <https://unesdoc.unesco.org/ark:/48223/pf0000261065>.

the *legal* definition of 'refugee' for the purposes of the Refugee Convention. In such circumstances, a journalist's claim may be rejected in its entirety for failing to meet this threshold legal requirement.<sup>39</sup>

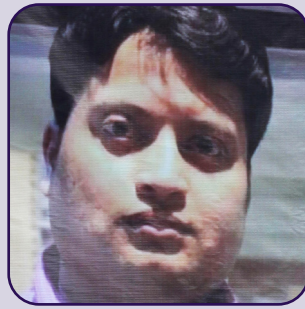
- **Inability to resume journalistic activity:** The minority of journalists who are able to relocate in time before any risk to their safety has eventuated are very often unable to continue their work as journalists. According to statistics, fewer than 20 per cent of journalists are in fact able to resume their journalistic work upon relocation.<sup>40</sup>
  - **Further post-relocation threats and issues:** States that choose to persecute journalists very rarely confine their efforts to their own borders. Journalists who have relocated can find themselves subject to a range of measures from the revocation of, or the refusal to renew, their passports, all the way through to the issuance of extradition requests or INTERPOL Red Notices. In addition, even journalists who have successfully relocated may find that their families become the subjects of reprisals in their home State.
34. That these are not theoretical concerns is borne out by the numerous case studies cited in this Report of journalists who may have been able to remain safe and continue their work in their home countries, had more satisfactory and robust avenues for relocation been open to them at the time. These examples, however striking and thought-provoking, make up only a tiny fraction of: (i) the number of journalists affected by the limitations of the present system; and (ii) the intractable situations journalists can find themselves in when seeking safe refuge abroad.
35. Sometimes the shortcomings in the present system of recourse have led to tragic consequences, as in the chilling case of **Ananta Bijoy Das (Case study I)**, the 31-year-old award-winning writer, blogger and editor, murdered in Bangladesh in 2015.

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39 See further, **The key impediments within the current system: International Protection** from §194.

40 CPJ, 'Syria tops survey of journalists fleeing into exile', 17 June 2015, available online at: <https://cpj.org/2015/06/syria-tops-survey-of-journalists-fleeing-into-exil>.

## Case study I: The murder of Ananta Bijoy Das in Bangladesh



- Born in 1984, Ananta Bijoy Das (sometimes 'Dash') was an award-winning writer, editor and blogger in Bangladesh. He wrote about secularism and science for the website Free Mind and wrote on issues of religious fundamentalism in the Indian sub-continent, including articles considering aspects of Islam and Hinduism.
- In February 2013 and March 2015, Mr. Das appeared on the assassination list of the terrorist group, Ansarullah Bangla Team (ABT). He had already received numerous death threats from other groups.
- In February 2015, after his fellow blogger Avijit Roy was murdered, Mr. Das went into hiding and attempted to seek safe refuge outside of Bangladesh. He was eventually accepted by the International Cities of Refuge Network (ICORN) for a placement overseas. The process to finalise this placement was, as is often the case, protracted.
- In the meantime, in April 2015, Mr. Das was invited by Swedish PEN to talk at a World Press Freedom Day event in Stockholm. However, on 22 April 2015, Mr. Das's Schengen visa application was refused by the Swedish Embassy in Dhaka. In the e-mail rejecting his request for a visa, the Swedish authorities stated: 'You belong to a category of applicant where there is always a risk involved when granting a visa that you will not leave [the] Schengen area after the visit... Furthermore, the purpose of your trip is not urgent enough to grant you [a] visa.'
- On 12 May 2015, around the time when he was due to be in Stockholm, Mr. Das was hacked to death on his way to work by masked individuals who wielded machetes. ABT took responsibility for the murder. Mr. Das was just 31 years old and the third Bangladeshi journalist to be killed in 2015 alone.
- In response to Swedish PEN's call for an explanation for the decision to refuse Mr. Das a visa, the Swedish Government noted that Mr. Das had not applied for asylum and had he done so they would have evaluated his application. It was, of course, the Swedish authorities' original concern that such an application would have been made by Mr. Das – if permitted to enter Sweden on a visa – that had formed the basis of the visa rejection in the first place.
- On 18 August 2015, three suspects were arrested and ten days later, one of them confessed his involvement. On 10 September 2015, three further suspects were arrested. In May 2017, a supplementary charge sheet was filed against six accused men. Their trial commenced on 7 May 2019, with only one of them being present. On 1 September 2019, two more testimonies were recorded by the court. However, many of those involved in Mr. Das's murder reportedly remain at large.

Sources: Swedish PEN, 'Svenska Pen Kräver Sveriges Ambassad I Dhaka På Svar Efter Tisdagens Mord På Den Sverigeaktuelle Författaren Och Bloggaren Ananta Bijoy Dash', 12 May 2015, available online at: [www.svenskapen.se/senaste-nytt/2018/3/23/svenska-pen-krver-sveriges-ambassad-i-dhaka-p-svar-efter-tisdagens-mord-p-den-sverigeaktuelle-frfattaren-och-bloggaren-ananta-bijoy-dash](http://www.svenskapen.se/senaste-nytt/2018/3/23/svenska-pen-krver-sveriges-ambassad-i-dhaka-p-svar-efter-tisdagens-mord-p-den-sverigeaktuelle-frfattaren-och-bloggaren-ananta-bijoy-dash); The New York Times, 'Fearing Bangladeshi Blogger Might Claim Asylum, Sweden Blocked Visit That Could Have Saved His Life', 13 May 2015, available online at: [www.nytimes.com/2015/05/14/world/asia/fearing-bangladeshi-blogger-might-claim-asylum-sweden-blocked-visit-that-could-have-saved-his-life.html](http://www.nytimes.com/2015/05/14/world/asia/fearing-bangladeshi-blogger-might-claim-asylum-sweden-blocked-visit-that-could-have-saved-his-life.html); PEN America, 'Bangladesh: Murder of Third Secular Blogger Highlights Need for Better Protection', 14 May 2015, available online at: <https://pen.org/bangladesh-murder-of-third-secular-blogger-highlights-need-for-better-protection>; Dhaka Tribune, 'Sweden: Ananta did not seek asylum', 14 May 2015, available online at: [www.dhakatribune.com/uncategorized/2015/05/14/sweden-ananta-did-not-seek-asylum](http://www.dhakatribune.com/uncategorized/2015/05/14/sweden-ananta-did-not-seek-asylum); The Daily New Nation, 'Court Records Testimonies of 2 More Witnesses', 7 September 2019, available online at: <http://m.thedailynewnation.com/news/228134/court-records-testimonies-of-2-more-witnesses>; PEN International, 'PEN Case List 2019', last accessed October 2020, available online at: <https://pen-international.org/app/uploads/Case-List-2019-Web-2UP-WPFD.pdf>.

# Circumstances making relocation necessary for a journalist: the 'risk'

36. Journalists are facing increasingly overt and serious threats to their safety and liberty, as they are targeted for their work.<sup>41</sup> As Ms. Amal Clooney's first Report for the High Level Panel has rightly observed, the threats faced by journalists today are as varied as they are extensive.<sup>42</sup> Those threats have only since intensified with the onset of the global Covid-19 pandemic.<sup>43</sup>
37. The need to leave one's home country as a journalist comes in the face of such threats and sometimes after what is first threatened has actually come to pass. At times, the catalyst for seeking safety abroad falls short of physical harm, taking the form instead of extended periods of intense harassment; at other times, the journalist, as in the case of Mr. Das, tragically pays the ultimate price, before being able to leave for safety.<sup>44</sup>
38. Remarkably, in today's world, the personal safety of journalists who work in hostile environments reporting on politics, crime and corruption is as much at risk as that of journalists who work in war zones.<sup>45</sup>
39. Proposals for strengthening the framework for the provision of safe and secure refuge for journalists in danger must necessarily begin with, and be informed by, an understanding of the common dangers they face: what follows are some of the most commonplace.<sup>46</sup>

## A. Criminalisation of journalistic activity

40. Many journalists live under the constant threat of investigation, prosecution, arrest and/or detention for doing their work. The charges that might be laid are various, but are often on grounds of terrorism, espionage, criminal conspiracy or sometimes pursuant to criminal libel.<sup>47</sup> CPJ has reported that while anti-State charges

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41 RSF, '2020 World Press Freedom Index: "Entering a decisive decade for journalism, exacerbated by coronavirus"', 2020, available online at: <https://rsf.org/en/2020-world-press-freedom-index-entering-decisive-decade-journalism-exacerbated-coronavirus>; see also RSF, '2019 World Press Freedom Index – A cycle of fear', 2019, available online at: <https://rsf.org/en/2019-world-press-freedom-index-cycle-fear>; see also The New York Times, A. G. Sulzberger, 'The Growing Threat to Journalism Around the World', 23 September 2019, available online at: [www.nytimes.com/2019/09/23/opinion/press-freedom-arthur-sulzberger.html](http://www.nytimes.com/2019/09/23/opinion/press-freedom-arthur-sulzberger.html).

42 International Bar Association Human Rights Institute, Ms. Amal Clooney, 'Report on the Use of Targeted Sanctions to Protect Journalists', 13 February 2020, pp. 5-6, paras. 1-5, available online at: [www.ibanet.org/Document/Default.aspx?DocumentUid=1734a793-fd31-452d-84ca-b85efc4af744](http://www.ibanet.org/Document/Default.aspx?DocumentUid=1734a793-fd31-452d-84ca-b85efc4af744).

43 See UNESCO, 'Journalism, press freedom and COVID-19', pp. 13-14, available online at: [https://en.unesco.org/sites/default/files/unesco\\_covid\\_brief\\_en.pdf](https://en.unesco.org/sites/default/files/unesco_covid_brief_en.pdf); see also Statement by the four Groups of Friends on the Safety of Journalists at UNESCO, the United Nations in New York and Geneva, and the OSCE, 'Joint statement on safety of journalists and access to information during the COVID-19 crisis', 15 April 2020, available online at: [www.gov.uk/government/news/joint-statement-on-safety-of-journalists-and-access-to-information-during-the-covid-19-crisis--2](http://www.gov.uk/government/news/joint-statement-on-safety-of-journalists-and-access-to-information-during-the-covid-19-crisis--2).

44 According to the UNESCO Observatory of Killed Journalists, 1,413 journalists have been killed since 1993 (as of October 2020), with 156 journalists having been killed between January 2018 and December 2019: see: UNESCO, 'UNESCO Observatory of Killed Journalists', last accessed October 2020, available online at: <https://en.unesco.org/themes/safety-journalists/observatory>. CPJ provides similar statistics: between 1992 and 2019, more than 1,300 journalists had been killed, more than 1,700 journalists had been imprisoned and 67 had gone missing. As of 24 October 2020, CPJ has recorded that 20 journalists have been killed and 64 journalists are missing in 2020: see CPJ, 'Explore CPJ's database of attacks on the press', last accessed October 2020, available online at: <https://cpj.org/data>. UNESCO reports that, on average, two journalists are killed every week and during 2014-2018, 91 per cent of those who were killed were local journalists rather than those on assignment in foreign countries, indicating that those who face danger predominantly reside within the countries from which they seek to flee: see UNESCO, 'Intensified Attacks, New Defences: Developments in the Fight to Protect Journalists and End Impunity', 2019, pp. 9, 10 and 14, available online at: <https://unesdoc.unesco.org/ark:/48223/pf0000371487>.

45 See Council of Europe, Marilyn Clark and William Horsley, 'A Mission to Inform: Journalists at risk speak out', September 2020, p. 106, available online at: <https://rm.coe.int/prems-021220-gbr-2018-a-mission-to-inform-journalists-at-risk-speak-ou/16809ff1e2>. Between early 2016 and 2018, the percentage of journalists killed working in conflict zones was lower than the percentage of journalists killed working outside conflict zones: see UNESCO, 'Intensified Attacks, New Defences: Developments in the Fight to Protect Journalists and End Impunity', 2019, p. 14, available online at: <https://unesdoc.unesco.org/ark:/48223/pf0000371487>.

46 As noted above, extrajudicial killings of journalists are prevalent but do not form the focus of this Report.

47 UNESCO, 'Intensified Attacks, New Defences: Developments in the Fight to Protect Journalists and End Impunity', 2019, pp. 38-39, available online at: <https://unesdoc.unesco.org/ark:/48223/pf0000371487>.

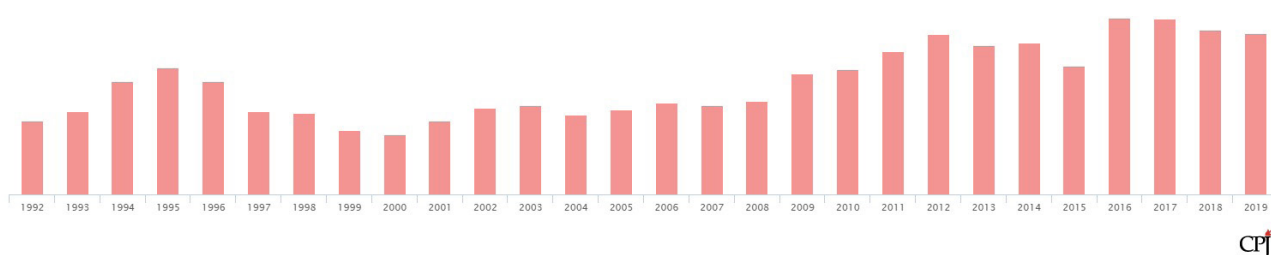
remained the most common ground for imprisoning journalists in 2019, the number of journalists being charged under ‘false news’ laws had risen compared with 2018.<sup>48</sup>

41. According to RSF’s figures, a total of 348 journalists were being detained worldwide in connection with the provision of news and information as at the start of December 2018. That figure was seven per cent higher than on the same date in 2017.<sup>49</sup> As at December 2019, 389 journalists had been detained, a further increase of twelve per cent on the previous year, a statistic that does not include those journalists arbitrarily detained for ‘a few hours, days or even weeks in the course of the past year’.<sup>50</sup>
42. CPJ has reported that, between 1992 and 2019, 1,772 journalists found themselves behind bars, 290 of whom without charge.<sup>51</sup> The CPJ figure for 2019 alone was at least 248,<sup>52</sup> with RSF reporting that almost half of detained journalists were being held in three countries: China, Egypt and Saudi Arabia.<sup>53</sup> Syria, Turkey and Vietnam closely follow.<sup>54</sup>

**Figure 1: Journalists imprisoned between 1992 and 2019**

### Journalists Imprisoned

between 1992 and 2019



CPJ

Source – Committee to Protect Journalists<sup>55</sup>

43. Of particular note is the fact that prolonged pre-trial detention of journalists has become a practice in a number of States and is deployed as a means of punishing and silencing journalists. That is, of course, not a legally permissible practice, violating as it does a State’s obligations, under domestic and international law, to use pre-trial detention as a measure of last resort only.<sup>56</sup>

48 CPJ, ‘China, Turkey, Saudi Arabia, Egypt are world’s worst jailers of journalists’, 11 December 2019, revised 2020, available online at: <https://cpj.org/reports/2019/12/journalists-jailed-china-turkey-saudi-arabia-egypt.php>.

49 RSF, ‘Worldwide Round-up of journalists killed, detained, held hostage, or missing in 2018’, 2018, p. 13, available online at: [https://rsf.org/sites/default/files/worldwide\\_round-up.pdf](https://rsf.org/sites/default/files/worldwide_round-up.pdf).

50 RSF, ‘Worldwide Round-up of journalists killed, detained, held hostage, or missing in 2019’, 2019, p. 12, available online at: [https://rsf.org/sites/default/files/rsf\\_2019\\_en.pdf](https://rsf.org/sites/default/files/rsf_2019_en.pdf).

51 CPJ, ‘Explore CPJ’s database of attacks on the press’, last accessed October 2020, available online at: <https://cpj.org/data>.

52 CPJ, ‘China, Turkey, Saudi Arabia, Egypt are world’s worst jailers of journalists’, 11 December 2019, available online at: <https://cpj.org/reports/2019/12/journalists-jailed-china-turkey-saudi-arabia-egypt.php>.

53 RSF, ‘Worldwide Round-up of journalists killed, detained, held hostage, or missing in 2019’, 2019, p. 13, available online at: [https://rsf.org/sites/default/files/rsf\\_2019\\_en.pdf](https://rsf.org/sites/default/files/rsf_2019_en.pdf).

54 RSF, ‘Worldwide Round-up of journalists killed, detained, held hostage, or missing in 2019’, 2019, p. 13, available online at: [https://rsf.org/sites/default/files/rsf\\_2019\\_en.pdf](https://rsf.org/sites/default/files/rsf_2019_en.pdf).

55 CPJ, ‘Explore CPJ’s database of attacks on the press’, last accessed October 2020, available online at: [https://cpj.org/data/?status=imprisoned&start\\_year=1992&end\\_year=2019&group\\_by=year](https://cpj.org/data/?status=imprisoned&start_year=1992&end_year=2019&group_by=year). 2015:198; 2016:272; 2017:271; 2018:254; 2019:248. RSF reported that 389 journalists were detained in 2019: RSF, ‘Worldwide Round-up of journalists killed, detained, held hostage, or missing in 2019’, 2019, p. 12, available online at: [https://rsf.org/sites/default/files/rsf\\_2019\\_en.pdf](https://rsf.org/sites/default/files/rsf_2019_en.pdf).

56 Article 9(3) of the International Covenant on Civil and Political Rights provides in relevant part that: ‘It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.’ See also, General Comment No. 35 – Article 9, at para. 38; Article 7(5) and Article 8(1) of the American Convention on Human Rights; and Articles 5(1), 5(3) and Article 6(1) of the European Convention on Human Rights. Rule 6.1 of the United Nations Standard Minimum Rules for Non-Custodial Measures (also known as the ‘Tokyo Rules’) provides that ‘pre-trial detention shall be used as a means of last resort in criminal proceedings, with due regard for the investigation of the alleged offence and for the protection of society and the victim.’

44. In **Can Dündar**'s case in Turkey (**Case study II**), his eventual release from an extended period of pre-trial detention in 2016 (following a decision of the Turkish Constitutional Court) was only followed by an unsuccessful assassination attempt on the steps of the courthouse where he was then, moments later, sentenced to over five years in prison for the publication of a news story. While Mr. Dündar managed to leave Turkey in 2016 and eventually to find safe refuge in Germany, his wife (who had saved his life outside court) was issued with a travel ban, and an order for Mr. Dündar's extradition from Germany was sought, without success, by the Turkish authorities.

## Case study II: Criminalising journalistic activity in Turkey – Can Dündar and Erdem Gül



- Can Dündar is a prominent Turkish journalist and formerly the Editor-in-Chief of *Cumhuriyet*, Turkey's oldest broadsheet newspaper. Erdem Gül is the newspaper's Ankara correspondent.
- In May 2015, the newspaper published a news item claiming that the Turkish intelligence agencies were transporting weapons to rebels in Syria. In response to the publication, President Erdoğan publicly stated that Messrs. Dündar and Gül would not 'get away' with this news story.
- In November 2015, both journalists were arrested and placed in pre-trial detention on charges of espionage, divulging State secrets and aiding a terrorist organisation. Following 92 days of pre-trial detention, Turkey's Constitutional Court ordered the journalists' release.
- In May 2016, while awaiting the verdict in his criminal trial, Mr. Dündar was approached outside of the courthouse by a gunman who shot at him, narrowly missing. Mr. Dündar was sentenced to five years and ten months and Mr. Gül to five years' imprisonment, both on charges relating to the disclosure of classified information. They remained free, pending their appeals.
- It was reported that Mr. Dündar left Turkey for Spain in 2016 and eventually sought refuge in Germany. He was subsequently issued travel documents by Germany as a precaution in case a travel ban was issued against him by Turkey.
- In March 2018, the Turkish Court of Appeals reversed the lower court's decision. It held that Mr. Gül should be acquitted but the case against Mr. Dündar should proceed on the basis of the original espionage charges rather than the disclosure of classified information.
- While the proceedings against Mr. Dündar were ongoing, the Turkish authorities have sought his extradition from Germany and have reportedly requested the issuance of an INTERPOL Red Notice. A travel ban was imposed on Mr. Dündar's wife and her passport was seized.
- In October 2020, Mr. Dündar was declared a fugitive by the Turkish Court that also ordered the seizure of his assets in Turkey, failing his immediate return to the country. Currently Mr. Dündar resides in Germany. He is the 2016 recipient of a CPJ International Press Freedom Award.

Sources: Hürriyet, 'Can Dündar'a 5 yıl 10 ay hapis', 7 May 2016, available online at: [www.hurriyet.com.tr/gundem/5-yil-10-ay-hapis-40100524](http://www.hurriyet.com.tr/gundem/5-yil-10-ay-hapis-40100524); Habertürk, 'Almanya Can Dündar'a geçici pasaport verdi', 3 November 2016, available online at: [www.haberturk.com/dunya/haber/1318955-almanya-can-dundara-gecici-pasaport-verdi](http://www.haberturk.com/dunya/haber/1318955-almanya-can-dundara-gecici-pasaport-verdi); Deutsche Welle, 'Turkish journalist Can Dunder faces Interpol red notice possibility', 2 April 2018, [www.dw.com/en/turkish-journalist-can-dundar-faces-interpol-red-notice-possibility/a-43228788](http://www.dw.com/en/turkish-journalist-can-dundar-faces-interpol-red-notice-possibility/a-43228788); Index on Censorship, 'Project Exile: Turkey's Dündar free in exile, still threatened', 14 January 2019, available online at: [www.indexoncensorship.org/2019/01/project-exile-turkeys-dundar-free-in-exile-still-threatened](http://www.indexoncensorship.org/2019/01/project-exile-turkeys-dundar-free-in-exile-still-threatened); Council of Europe, Marilyn Clark and William Horsley, 'A Mission to Inform: Journalists at risk speak out', September 2020, pp. 29 and 58, available online at: <https://rm.coe.int/prems-021220-gbr-2018-a-mission-to-inform-journalists-at-risk-speak-ou/16809ff1e2>; Deutsche Welle, 'Turkey seizes journalist Can Dunder's assets, declares him a fugitive', 7 October 2020, available online at: [www.dw.com/en/turkey-seizes-journalist-can-dundars-assets-declares-him-a-fugitive/a-55192669](http://www.dw.com/en/turkey-seizes-journalist-can-dundars-assets-declares-him-a-fugitive/a-55192669); Expression Interrupted!, 'Can Dündar', last accessed October 2020, available online at: [www.expressioninterrupted.com/can-dundar](http://www.expressioninterrupted.com/can-dundar); Global Freedom of Expression Columbia University, 'The Case of Can Dündar and Erdem Gül', last accessed October 2020, available online at: <https://globalfreedomofexpression.columbia.edu/cases/case-journalists-can-dundar-erdem-gul>.

45. A further example is the case of Ukrainian-born journalist **Kirill Vyshinsky (Case study III)**. In May 2018 Mr. Vyshinsky was arrested by the Ukraine Security Services in Kyiv, for acts that were deemed '*anti-Ukrainian*', and placed in pre-trial detention, only to be released on bail a few days before being sent to Russia in September 2019, as part of a detainee exchange between the Ukraine and Russia.



### Case study III: The pre-trial detention of Kirill Vyshinsky in Ukraine



- Kirill Vyshinsky (sometimes 'Vyshynsky') is a Ukrainian-born journalist who worked as the head of RIA Novosti, a Russian state-operated news agency, in its Ukraine Office in Kyiv.
- On 15 May 2018, the Ukraine Security Service searched the Kyiv Office of RIA Novosti and detained Mr. Vyshinsky. The Prosecutor-General of Ukraine, Yuriy Lutsenko, was quoted as having said that Mr. Vyshinsky's acts were '*anti-Ukrainian*' and amounted to '*state treason*'.
- In an official statement, the Ukraine Security Service claimed that Mr. Vyshinsky had travelled to Crimea in 2014 and undertook '*propaganda campaigns aimed at supporting annexation and joining the peninsula to the Russian Federation*'. It was alleged that Mr. Vyshinsky had been awarded a medal by a private decree of the Russian President for his work '*in favor of the aggressor country*'. He was accused of, *inter alia*, justifying Russia's annexation of Crimea, as well as receiving financial support from the Russian Government through other media companies to hide his links with Russia, and collaborating with armed separatists.
- Mr. Vyshinsky was placed in a detention centre in Kherson. The fact of his pre-trial detention was raised with concern by the OSCE Representative on Freedom of the Media and CPJ through several public statements. Mr. Vyshinsky was released on bail in August 2019, after more than a year in pre-trial detention.
- Days after his release Mr. Vyshinsky was sent to Russia as part of a detainee exchange between Ukraine and Russia. On 9 September 2019, Mr. Vyshinsky was appointed Executive Director of Rossiya Segodnya, a news agency owned and operated by the Russian government.

Sources: Council of Europe Platform to promote the protection of journalism and safety of journalists, 'RIA Novosti Journalist Kyrilo Vyshinsky Held on Treason Allegations in Ukraine', 16 May 2018, available online at: [www.coe.int/en/web/media-freedom/detail-alert?p\\_p\\_id=sojdashboard\\_WAR\\_coesoportlet&p\\_p\\_lifecycle=0&p\\_p\\_col\\_id=column-3&p\\_p\\_col\\_count=7&sojdashboard\\_WAR\\_coesoportlet\\_alertPK=51582492](http://www.coe.int/en/web/media-freedom/detail-alert?p_p_id=sojdashboard_WAR_coesoportlet&p_p_lifecycle=0&p_p_col_id=column-3&p_p_col_count=7&sojdashboard_WAR_coesoportlet_alertPK=51582492); CPJ, 'Ukraine authorities should drop charges against Russian journalist Kirill Vyshinsky', 28 August 2019, available online at: <https://cpj.org/2019/08/ukraine-authorities-should-drop-charges-against-ru.php>; RT, 'Jailed Russian journalist Kirill Vyshinsky freed in seismic detainee exchange with Kiev', 7 September 2019, available online at: [www.rt.com/russia/468246-journalist-vyshinsky-prisoner-swap-ukraine](http://www.rt.com/russia/468246-journalist-vyshinsky-prisoner-swap-ukraine); 112 UA, 'Vyshynsky appointed as executive director of one of Russian mass media', 7 October 2019, available online at: <https://112.international/politics/vyshynsky-appointed-as-executive-director-of-one-of-russian-mass-media-44295.html>; CPJ, 'Kirill Vyshinsky', last accessed October 2020, available online at: <https://cpj.org/data/people/kirill-vyshynsky/index.php>.

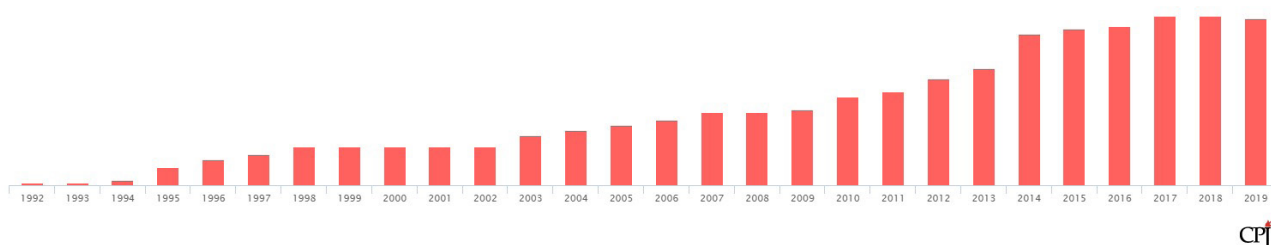
## B. Kidnapping and enforced disappearance of journalists

46. Journalists are subject to threats of kidnapping or enforced disappearance. Such threats come at the hands of both State and non-State actors and have the effect of silencing a particular journalist's reporting while serving to create a more general atmosphere of fear,<sup>57</sup> 'chilling' speech and journalistic activity.
47. In 2019, RSF reported that 57 journalists were being held hostage by non-State actors in the surveyed year.<sup>58</sup> CPJ recorded that 65 journalists continued to be missing in 2018, with that number reducing to 64 in 2019 but only because one journalist was confirmed dead,<sup>59</sup> representing an almost 90 per cent increase on the 34 journalists recorded as missing in 2010.<sup>60</sup> The general upward trajectory of the number of journalists who have disappeared can be observed in Figure 2, a graph reflecting data gathered by CPJ.
48. These numbers do not account for the countless incidents that go unreported. In reality, the number of kidnappings and enforced disappearances of journalists is likely to be much higher.

**Figure 2: Journalists missing between 1992 and 2019**

### Journalists Missing

between 1992 and 2019



CPJ

Source – Committee to Protect Journalists<sup>61</sup>

## C. Novel forms of harassing journalists

### i. New technologies

49. New forms of harassment are on the rise. The UN Secretary General's 2019 Report on the Safety of Journalists observed that new technologies and new forms of media have resulted in the '*rapid spread of targeted disinformation and smear campaigns*', contributing to further threats to the safety of journalists.<sup>62</sup> A 2019 UNESCO Report sought to illustrate how online harassment can render a journalist more at risk of physical harm. For example, 'doxing' is the term used to refer to the online practice of exposing an individual's private, or personally identifiable, information, which can then lead to physical danger for that

57 UNESCO, 'Intensified Attacks, New Defences: Developments in the Fight to Protect Journalists and End Impunity', 2019, p. 40, available online at: <https://unesdoc.unesco.org/ark:/48223/pf0000371487>.

58 RSF, 'Worldwide Round-up of journalists killed, detained, held hostage, or missing in 2019', 2019, p. 19, available online at: [https://rsf.org/sites/default/files/rsf\\_2019\\_en.pdf](https://rsf.org/sites/default/files/rsf_2019_en.pdf).

59 Information provided to the Author by CPJ in February 2020.

60 CPJ, 'Explore CPJ's database of attacks on the press', last accessed October 2020, available online at: [https://cpj.org/data/?status=Missing&start\\_year=1992&end\\_year=2019&group\\_by=year](https://cpj.org/data/?status=Missing&start_year=1992&end_year=2019&group_by=year).

61 CPJ, 'Explore CPJ's database of attacks on the press', last accessed October 2020, available online at: [https://cpj.org/data/?status=Missing&start\\_year=1992&end\\_year=2019&group\\_by=year](https://cpj.org/data/?status=Missing&start_year=1992&end_year=2019&group_by=year). 2015: 60; 2016: 61; 2017: 65; 2018: 65; 2019: 64. As at 23 October 2020, CPJ has recorded 64 journalists as missing in 2020: see CPJ, 'Explore CPJ's database of attacks on the press', last accessed October 2020, available online at: <https://cpj.org/data>.

62 Report of the Secretary-General, 'The safety of journalists and the issue of impunity', 16 August 2019, p. 3, available online at: <https://digitallibrary.un.org/record/3826999?ln=en>.

individual.<sup>63</sup> In recognition of these new forms of harassment, UNESCO has categorised the attacks and harassment that today's journalists can now face: online, offline and a combination of the two. Online and offline harassment, together with the release of sensitive identifying information, have been hallmarks in the mistreatment of Azeri journalist **Khadija Ismayilova (Case study IV)**.

**Figure 3: Categories of threats faced by journalists**



Source – UNESCO 2019<sup>64</sup>

50. Aside from overt online harassment, journalists can also find themselves subject to less visible forms of harassment:<sup>65</sup> online content access restrictions, internet shutdowns, co-ordinated cyber-attacks and surveillance. UNESCO has found that new legislation being passed around the world is serving to enable

63 UNESCO, 'Intensified Attacks, New Defences: Developments in the Fight to Protect Journalists and End Impunity', 2019, p. 47, available online at: <https://unesdoc.unesco.org/ark:/48223/pf0000371487>. The International Press Institute launched a new tool in February 2020 for newsrooms to address online harassment: see International Press Institute, 'IPI launches new protocol for newsrooms to address online harassment', 13 February 2020, available online at <https://ipi.media/ipi-launches-new-protocol-for-newsrooms-to-address-online-harassment>.

64 UNESCO, 'Intensified Attacks, New Defences: Developments in the Fight to Protect Journalists and End Impunity', 2019, p. 45, available online at: <https://unesdoc.unesco.org/ark:/48223/pf0000371487>.

65 UNESCO, 'Intensified Attacks, New Defences: Developments in the Fight to Protect Journalists and End Impunity', 2019, pp. 44 and 46, available online at: <https://unesdoc.unesco.org/ark:/48223/pf0000371487>.

online censorship and surveillance, without providing for independent judicial oversight and protection for the personal and source data of journalists.<sup>66</sup>

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66 UNESCO, 'Intensified Attacks, New Defences: Developments in the Fight to Protect Journalists and End Impunity', 2019, p. 45, available online at: <https://unesdoc.unesco.org/ark:/48223/pf0000371487>; see also, European Court of Human Rights (ECtHR), *Big Brother Watch and Others v. the United Kingdom*, App nos. 58170/13, 62322/14 and 24960/15, 13 September 2018, in which the ECtHR held that the UK's bulk data-collection and interception programs failed to incorporate adequate oversight and procedural safeguards, including for the purposes of the right to freedom of expression as guaranteed by Article 10. At para. 492, the Court noted '*that, having regard to the importance of the protection of journalistic sources for the freedom of the press in a democratic society, an interference could not be compatible with Article 10 of the Convention unless it was justified by an overriding requirement in the public interest...[An interference] will only be "justified by an overriding requirement in the public interest" if accompanied by sufficient safeguards relating both to the circumstances in which they may be selected intentionally for examination, and to the protection of confidentiality where they have been selected, either intentionally or otherwise, for examination.*' [Internal citations omitted.]

## Case study IV: Khadija Ismayilova smeared in Azerbaijan



- Khadija Ismayilova is an investigative journalist from Baku, Azerbaijan. In 2014, Ms. Ismayilova joined the Organized Crime and Corruption Reporting Project, where she is a senior investigator. She is the recipient of a number of awards for her investigative reporting including the 2016 UNESCO/Guillermo Cano World Press Freedom Prize.
- As part of her work, Ms. Ismayilova has taken on the subject of state-level corruption in Azerbaijan, including the alleged involvement of the Azerbaijan President, Ilham Aliyev, and his family in such corruption. Following her reporting on these issues, Ms. Ismayilova has been threatened and intimidated in numerous ways; she has been detained in proceedings issued against her in Azerbaijan and has had no fewer than three judgments from the ECtHR, finding violations of her Convention rights.
- One of those three cases is particularly instructive on the harassment of journalists. On 7 March 2012, Ms. Ismayilova received a letter that enclosed six images from a video taken in her bedroom with a hidden camera. The images showed her engaged in intimate activity and the letter read, '*Whore, refrain from what you are doing, otherwise you will be shamed!*' On 14 March 2012, the video was posted on a website, 'musavat.tv'. Müsavat is an opposition political party in Azerbaijan; it has denied any involvement with the website or the video. It has been suggested that the website domain name was deliberately chosen to suggest a link with the party. Eight months after the release of the video, a pro-government newspaper published an article making pejorative claims about Ms. Ismayilova, with references to the video. In July 2013, another similarly graphic and explicit video was posted which appeared to have been taken with the same camera.
- Ms. Ismayilova reported these incidents to the authorities who commenced an investigation. After several complaints by Ms. Ismayilova as to the adequacy of the investigation and requests for status reports, the Baku City Prosecutor's Office published a status report in the press, noting that Ms. Ismayilova had been spreading false information about the investigation. The status report also disclosed sensitive personal information including Ms. Ismayilova's home address, the identity of her then-partner and the names and occupations of her friends and colleagues.
- In assessing Ms. Ismayilova's case, the European Court of Human Rights held in a judgment of January 2019 that, amongst other things, there had been an Article 8 violation '*in connection with the domestic authorities' failure to comply with their positive obligation to investigate effectively very serious intrusions into the applicant's private life [and]...in connection with the disclosure of the private information published in the authorities' report on the status of the investigation*'. The Court also held that the State's failure to comply with its positive obligation to protect Ms. Ismayilova's freedom of expression in the context of the smear campaign, had amounted to a violation of Article 10.

Sources: ECtHR, *Khadija Ismayilova v. Azerbaijan*, App. Nos. 65286/13 and 57270/14, 10 January 2019 and *Khadija Ismayilova v. Azerbaijan* (No. 3), App. No. 35283/14, 7 May 2020; Global Freedom of Expression Columbia University, *Khadija Ismayilova v. Azerbaijan* (no. 2), last accessed October 2020, available online at: <https://globalfreedomofexpression.columbia.edu/cases/khadija-ismayilova-v-azerbaijan>; see also OCCRP, 'About Khadija Ismayilova', last accessed October 2020, available online at: [www.occrp.org/en/corruptistan/azerbaijan/khadijaismayilova/about.html](http://www.occrp.org/en/corruptistan/azerbaijan/khadijaismayilova/about.html).

## ii. Gender-specific attacks

51. In recent years, there has been an alarming increase in the number of gender-specific attacks on journalists.<sup>67</sup> Female journalists are facing increased sexual harassment, sexual violence and threats of violence.<sup>68</sup> These can take various forms, including death or rape threats, insults, being sent obscene images, cyberbullying, cyberstalking and account impersonation. Female journalists are targeted more frequently and viciously online than their male counterparts.<sup>69</sup>
52. Moreover, attacks are often highly sexualised in nature and aim to silence female journalists, not only due to their journalistic work, but also '*for speaking out as women*'.<sup>70</sup> The treatment of **Maria Ressa (Case study V)**<sup>71</sup> offers a prominent example from the Philippines of what is one of the fastest growing forms of gender-based violence and harassment against journalists around the world.

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67 See, for example, Amnesty International, 'Troll Patrol Findings', last accessed October 2020, available online at: [https://decoders.amnesty.org/projects/troll-patrol/findings#what\\_did\\_we\\_find\\_container](https://decoders.amnesty.org/projects/troll-patrol/findings#what_did_we_find_container) which records that 1.1 million abusive and problematic tweets were sent to 778 female journalists and politicians in 2017; see also, IFJ, 'IFJ global survey shows massive impact of online abuse on women journalists', last accessed October 2020, available online at: [www.ifj.org/media-centre/news/detail/article/ifj-global-survey-shows-massive-impact-of-online-abuse-on-women-journalists.html](http://www.ifj.org/media-centre/news/detail/article/ifj-global-survey-shows-massive-impact-of-online-abuse-on-women-journalists.html) which reports that almost two-thirds of women journalists have been subjected to online abuse according to the IFJ's global survey.

68 UNESCO, 'Intensified Attacks, New Defences: Developments in the Fight to Protect Journalists and End Impunity', 2019, p. 49, available online at: <https://unesdoc.unesco.org/ark:/48223/pf0000371487>; see also Inter Press Service, Natalie Southwick and Renata Neder, 'To Attack a Female Journalist's Credibility, Go After Her Body', 4 March 2020, available online at: [www.ipsnews.net/2020/03/attack-female-journalists-credibility-go-body](http://www.ipsnews.net/2020/03/attack-female-journalists-credibility-go-body).

69 UNESCO, 'Intensified Attacks, New Defences: Developments in the Fight to Protect Journalists and End Impunity', 2019, p. 49, available online at: <https://unesdoc.unesco.org/ark:/48223/pf0000371487>; see also CPJ, "'The threats follow us home": Survey details risks for female journalists in U.S., Canada', 4 September 2019, available online at: <https://cpj.org/2019/09/canada-usa-female-journalist-safety-online-harassment-survey>, which records that online harassment was cited as the biggest threat by 90 per cent of survey respondents in the United States; see also International Center for Journalists, Julie Posetti, 'Online Violence: The New Front Line for Women Journalists', 24 September 2020, available online at: [www.icfj.org/news/online-violence-new-front-line-women-journalists](http://www.icfj.org/news/online-violence-new-front-line-women-journalists).

70 UNESCO, 'Intensified Attacks, New Defences: Developments in the Fight to Protect Journalists and End Impunity', 2019, p. 49, available online at: <https://unesdoc.unesco.org/ark:/48223/pf0000371487>; see also Columbia Journalism Review, Anne Helen Peterson, 'The cost of reporting while female', 2018, available online at: [www.cjr.org/special\\_report/reporting-female-harassment-journalism.php](http://www.cjr.org/special_report/reporting-female-harassment-journalism.php); see also Center for Media Engagement, Gina M. Masullo, Paromita Pain, Victoria Y. Chen, Madlin Mekelburg, Nina Springer and Franziska Troger, 'Women Journalists and Online Harassment', April 2018, available online at: <https://mediaengagement.org/research/women-journalists>.

71 The author of this Report is a member of Ms. Ressa's International Counsel team.

## Case study V: Gender-based attacks on Maria Ressa in the Philippines



- Maria Ressa is the CEO and Executive Editor of Rappler, a leading online news website in the Philippines. Ms. Ressa was previously CNN's Bureau Chief in Manila and was included in *Time Magazine's* Person of the Year 2018 as one of a collection of journalists around the world combatting misinformation. She is also the recipient of numerous awards for her work, including CPJ's Gwen Ifill Press Freedom Award *'in recognition of her journalistic courage in the face of persistent official harassment'*.
- Since the Philippines' President Duterte was elected in 2016, Ms. Ressa and Rappler have reported on the misinformation put out by President Duterte's online 'troll army' regarding his presidency and on extrajudicial killings, in the 'war on drugs'. Since then, Ms. Ressa has faced an avalanche of harassment and threats, including of a gendered and sexualised nature.
- In 2016, a blogger, Margaux 'Mocha' Uson, used the term 'presstitute' – a play on the words 'press' and 'prostitute' – to describe elements in the Philippines media.

The word has become a commonly used derogatory term that President Duterte's supporters have used against members of the press, including Ms. Ressa.

- Ms. Ressa and her employees have also been the targets of personal attacks including rape and death threats. For example, in early 2017, a 22-year-old man wrote on Rappler's Facebook page:

*'I want Maria Ressa to be raped repeatedly to death, I would be so happy if that happens when martial law is declared, it would bring joy to my heart.'*

- Ms. Ressa has described the attacks on her and other women:

*'It began a spiral of silence. Anyone who was critical or asked questions about extrajudicial killings was attacked, brutally attacked. The women got it worst...'*

*'They attack your physicality, your sexuality. When you are denigrated, and stripped of dignity in this way, how can you maintain your credibility? All of these things work together for a single purpose and that's to prevent journalists from doing their jobs.'*

- Ms. Ressa and Rappler are currently the subject of numerous legal proceedings in the Philippines. In June 2020, Ms. Ressa was convicted of 'cyber libel' for a public interest story that Rappler published. In September 2020, the European Parliament called on the Philippines to drop all charges against Ms. Ressa and not to oppose the appeal of her conviction in the 'cyber libel' case.

Sources: UNESCO, Julie Posetti, 'Fighting back against prolific online harassment: Maria Ressa', 2017, available online at: <https://unesdoc.unesco.org/ark:/48223/pf0000259399/PDF/259399eng.pdf.multi>; Rappler, 'Philippine media under attack - Press freedom after 2 years of Duterte', 29 June 2018, available online at: <https://specials.rappler.com/newsbreak/investigative/206017-attacks-against-philippine-press-duterte-second-year/index.html>; The Guardian, Hannah Ellis-Peterson, 'Maria Ressa: everything you need to know about the Rappler editor', 15 June 2020, available online at: [www.theguardian.com/world/2019/feb/14/maria-ressa-arrest-everything-you-need-to-know-about-the-rappler-editor](http://www.theguardian.com/world/2019/feb/14/maria-ressa-arrest-everything-you-need-to-know-about-the-rappler-editor); Time, '2018: The Guardians: Maria Ressa', 5 March 2020, available online at: <https://time.com/5793800/maria-ressa-the-guardians-100-women-of-the-year>; European Parliament, 'Resolution on the Situation in the Philippines, including the case of Maria Ressa', 15 September 2020, available online at: [www.europarl.europa.eu/doceo/document/B-9-2020-0290\\_EN.html](http://www.europarl.europa.eu/doceo/document/B-9-2020-0290_EN.html).

## D. Travel bans and the revocation of travel documents

53. In recent years, States have increasingly resorted to imposing travel bans on journalists preventing them from leaving their home countries.<sup>72</sup> Such bans may be imposed either pending the determination of criminal proceedings<sup>73</sup> or simply introduced without any ostensible legal basis, as in the case of Nobel Peace Prize nominated Egyptian journalist, blogger and internet activist, **Esraa Abdel Fattah (Case study VI)**.
54. Other travel restrictions on journalists may take the form of measures tantamount to a travel ban: for instance, journalists having their passports or other travel documents confiscated, revoked or not renewed.<sup>74</sup> Then UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Professor David Kaye, characterised the growing use of travel bans as *'a kind of quiet repression' aimed not 'merely to punish the banned but to deny the spread of information about the state of repression and corruption in their home countries'*.<sup>75</sup>
55. Apart from being a form of repression, a restriction on travel constitutes a further and severe impediment on the ability of a journalist at risk to relocate. The right to leave the country, including one's home country, is, of course, a fundamental right<sup>76</sup> and an essential element to the International Protection framework.<sup>77</sup> Without it, an application for asylum becomes very difficult. Equally, a travel restriction imposed by a journalist's home State will almost always frustrate efforts to secure temporary relocation for the journalist at risk.

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72 See Front Line Defenders, '#TravelBan', last accessed October 2020, available online at: [www.frontlinedefenders.org/en/violation/travel-ban](http://www.frontlinedefenders.org/en/violation/travel-ban).

73 See, for instance, the case of Orhan Kemal Cengiz: Front Line Defenders, 'Case History: Orhan Kemal Cengiz', 28 July 2016, available online at: [www.frontlinedefenders.org/en/case/case-history-orhan-kemal-cengiz](http://www.frontlinedefenders.org/en/case/case-history-orhan-kemal-cengiz). The ECtHR is currently considering a number of applications by individual Azeri journalists against whom travel bans have been imposed by Azerbaijan: see, for example, *Aynur Ganbarova and others v. Azerbaijan* (App. Nos. 1158/17, 8405/17, 11040/17, 44031/17), and *Kamran Mahmudov v. Azerbaijan* (App. No 50612/18). The author acts as Counsel for parties in both cases before the Strasbourg Court.

74 See, for example, the case of Timur Karpov, a photographer and multimedia journalist from Uzbekistan. Mr. Karpov's work has documented the use of forced labour in the country's cotton fields, leading to threats and eventually his detention. In June 2019, Mr. Karpov was prevented from obtaining a passport to travel outside Uzbekistan on the basis that his application for a passport was 'unreasonable', thereby effectively subjecting him to a travel ban: see Front Line Defenders, 'Journalist Timur Karpov denied a passport for travelling abroad', 13 June 2019, available online at: [www.frontlinedefenders.org/en/case/journalist-timur-karpov-denied-passport-travelling-abroad](http://www.frontlinedefenders.org/en/case/journalist-timur-karpov-denied-passport-travelling-abroad).

75 Index on Censorship, David Kaye: 'The Other Travel Ban', 22 November 2017, available online at: [www.indexoncensorship.org/2017/11/david-kaye-the-other-travel-ban](http://www.indexoncensorship.org/2017/11/david-kaye-the-other-travel-ban).

76 See Article 12 of the ICCPR which provides, so far as relevant: '1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence. 2. Everyone shall be free to leave any country, including his own.' Article 12(3) of the ICCPR further provides that: 'The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.'

77 See **D. International Protection** from §151. As the Council of Europe Commissioner for Human Rights has noted, '[u]nless a person can escape his or her country and get to another country to seek asylum, he or she will not even begin to be able to exercise the right to asylum.': see Council of Europe Commissioner for Human Rights, 'The Right to Leave a Country', October 2013, p. 6, available online at: <https://rm.coe.int/the-right-to-leave-a-country-issue-paper-published-by-the-council-of-e/16806da510>.



## Case study VI: The travel ban on Esraa Abdel Fattah in Egypt



- Esraa Abdel Fattah is a Nobel Peace Prize nominated Egyptian journalist, blogger and activist. Dubbed 'Facebook Girl', Ms. Abdel Fattah was an influential figure in the protests against former Egyptian President Hosni Mubarak.
- In January 2015, Ms. Abdel Fattah was prevented from boarding a flight to Germany at Cairo International Airport. At that time no proceedings had been issued against her, nor had she been given any notice of restrictions on her travel.
- The travel ban was subsequently challenged before a number of Egyptian Courts, without success, and notwithstanding the efforts and support of CPJ, Media Defence and the UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression.
- In 2016, Ms. Abdel Fattah informed CPJ that she was afraid of being arrested and that she had been harassed by police forces as well as government supporters. In October 2018, four years and nine months after the travel ban was first issued against her, Ms. Abdel Fattah was summoned for interrogation in connection with a 2013 case in which 43 staff members of international NGOs had been convicted with custodial sentences on charges of *'using foreign funding to foment unrest'*.
- In October 2019, Ms. Abdel Fattah was reportedly abducted by Egyptian security officers to an undisclosed location where she was tortured, beaten, hung from handcuffs and choked. She was subsequently charged with spreading false news, collaborating with a terrorist organisation and abusing social media networks.
- Ms. Abdel Fattah remains in pre-trial detention. In August 2020, new terrorism charges were filed against her, for actions allegedly committed while in pre-trial detention. Social media posts have claimed that Ms. Abdel-Fattah has suffered from bleeding due to drugs given to her in prison, an allegation denied by the Interior Ministry. On 13 October 2020, Human Rights Watch made a submission referencing Ms. Abdel Fattah's case to the Committee on the Elimination of Discrimination against Women in the context of the Committee's review of Egypt's compliance with the Convention on the Elimination of All Forms of Discrimination against Women.

Sources: CPJ, 'CPJ calls on Egypt to lift travel ban on blogger Esraa Abdel Fattah', 23 December 2016, available online at: <https://cpj.org/2016/12/cpj-calls-on-egypt-to-lift-travel-ban-on-blogger-e.php>; Media Defence, 'Legal Team Statement: Two Year Travel Ban On Renowned Journalist & Activist Esraa Abdel Fattah Must Be Lifted Immediately', 24 December 2016, available online at: [www.mediadefence.org/news/legal-team-statement-two-year-travel-ban-on-renowned-journalist-activist-esraa-abdel-fattah-must-be-lifted-immediately](http://www.mediadefence.org/news/legal-team-statement-two-year-travel-ban-on-renowned-journalist-activist-esraa-abdel-fattah-must-be-lifted-immediately); Frontline Defenders, 'Case History: Esraa Abdel Fattah', available online at: [www.frontlinedefenders.org/en/case/case-history-esraa-abdel-fattah](http://www.frontlinedefenders.org/en/case/case-history-esraa-abdel-fattah); International Federation for Human Rights, 'Egypt: WHRD Esraa Abdel Fattah abducted and tortured, arbitrarily detained', 15 October 2019, available online at: [www.fidh.org/en/issues/human-rights-defenders/egypt-whrd-esraa-abdel-fattah-abducted-and-tortured-arbitrarily](http://www.fidh.org/en/issues/human-rights-defenders/egypt-whrd-esraa-abdel-fattah-abducted-and-tortured-arbitrarily); Egypt Today, 'Egypt's Interior Ministry denies reports on Esraa Abdel Fattah's health condition', 27 August 2020, available online at: [www.egypttoday.com/Article/1/91335/Egypt-s-Interior-Ministry-denies-reports-on-Esraa-Abdel-Fattah](http://www.egypttoday.com/Article/1/91335/Egypt-s-Interior-Ministry-denies-reports-on-Esraa-Abdel-Fattah); CPJ, 'Egypt files new charges against 3 journalists held in pre-trial detention since 2019', 2 September 2020, available online at: <https://cpj.org/2020/09/egypt-files-new-charges-against-3-journalists-held-in-pre-trial-detention-since-2019/>; Human Rights Watch, 'Human Rights Watch Submission to the Committee on the Elimination of Discrimination against Women on Egypt', 13 October 2020, available online at: [www.hrw.org/news/2020/10/13/human-rights-watch-submission-committee-elimination-discrimination-against-women](http://www.hrw.org/news/2020/10/13/human-rights-watch-submission-committee-elimination-discrimination-against-women).

## E. Post-relocation threats: abuse of international law enforcement and extradition procedures

56. States that choose to persecute journalists will very rarely limit their efforts to within their own borders. The minority of journalists at risk that have managed to relocate can find themselves subject to a range of home State measures, from the revocation of, or the refusal to renew, their passports while abroad, through to the issuance of politically motivated INTERPOL Red Notices or extradition requests.
57. INTERPOL is the world's largest policing organisation, an international law enforcement agency with 194 member countries.<sup>78</sup> Article 3 of the organisation's constitution precludes it from undertaking activities or interventions of a political nature.<sup>79</sup> INTERPOL is not, however, a judicial body and its procedures have been criticised for being far from transparent,<sup>80</sup> and for often falling short of the political neutrality it claims.
58. INTERPOL allows for circulation of 'wanted person alerts' including 'Red Notices' and 'Diffusions', which are used to secure the arrest of wanted persons abroad. As a result of a fast-track system introduced in 2009, member States can now very swiftly circulate information about wanted persons.
59. INTERPOL's introduction in 2015 of a review process undertaken by its General Secretariat, prior to the circulation of a Red Notice, has been reported as a significant improvement, according to the findings of a European Parliament report.<sup>81</sup> However, the European Parliament also found that there remain concerns about the quality and consistency of the review of Red Notice requests.<sup>82</sup> For example, according to the report, Fair Trials noted a lack of clarity surrounding, and inconsistent application of, the rules and principles governing the review process.<sup>83</sup> In addition, there exists no effective review process for Diffusions.<sup>84</sup>

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78 INTERPOL, 'Member countries', last accessed October 2020, available online at: [www.interpol.int/en/Who-we-are/Member-countries](http://www.interpol.int/en/Who-we-are/Member-countries); see generally, Giulio Calcara, 'A transnational police network co-operating up to the limits of the law: examination of the origin of INTERPOL', (2020) *Transnational Legal Theory*, available online at: [www.tandfonline.com/doi/pdf/10.1080/20414005.2020.1793282](http://www.tandfonline.com/doi/pdf/10.1080/20414005.2020.1793282).

79 INTERPOL, 'Constitution of the International Criminal Police Organization -INTERPOL' [I/CONS/GA/1956 (2017)], Article 3, available online at: [www.interpol.int/content/download/590/file/Constitution%20of%20the%20ICPO-INTERPOL-EN.pdf?inLanguage=eng-GB](http://www.interpol.int/content/download/590/file/Constitution%20of%20the%20ICPO-INTERPOL-EN.pdf?inLanguage=eng-GB); see also INTERPOL, 'Repository of Practice: Application of Article 3 of INTERPOL's Constitution in the context of the processing of information via INTERPOL's channels', February 2013, available online at: [www.interpol.int/content/download/12626/file/article-3-ENG-february-2013.pdf?inLanguage=eng-GB](http://www.interpol.int/content/download/12626/file/article-3-ENG-february-2013.pdf?inLanguage=eng-GB). Requests are supposed to be evaluated on a case-by-case basis by reviewing elements including, 'the predominance of political, military, religious or racial elements of the case over the ordinary law character of the crime': INTERPOL, 'Frequently Asked Questions', last accessed October 2020, available online at: [www.interpol.int/en/Who-we-are/Commission-for-the-Control-of-INTERPOL-s-Files-CCF/Frequently-Asked-Questions](http://www.interpol.int/en/Who-we-are/Commission-for-the-Control-of-INTERPOL-s-Files-CCF/Frequently-Asked-Questions); see further INTERPOL, Resolution on Request for international inquiries, AGN/20/RES/11, 10–15 June 1951; and INTERPOL Rules on the Processing of Data [III/IRPD/GA/2011 (2019)], Article 86: The General Secretariat shall conduct a legal review of all red notices prior to their publication to ensure compliance with INTERPOL's Constitution and Rules, in particular with Articles 2 and 3 of INTERPOL's Constitution.

80 The New York Times, 'The Misuse of Interpol's Database', 11 November 2015, available online at: [www.nytimes.com/2015/11/11/opinion/the-misuse-of-interpols-database.html](http://www.nytimes.com/2015/11/11/opinion/the-misuse-of-interpols-database.html).

81 European Parliament, 'Misuse of Interpol's Red Notices and impact on human rights – recent developments', January 2019, p. 18, available online at: [www.statewatch.org/media/documents/news/2019/feb/ep-study-interpol-red-notices.pdf.pdf](http://www.statewatch.org/media/documents/news/2019/feb/ep-study-interpol-red-notices.pdf.pdf).

82 European Parliament, 'Misuse of Interpol's Red Notices and impact on human rights – recent developments', January 2019, p. 18, available online at: [www.statewatch.org/media/documents/news/2019/feb/ep-study-interpol-red-notices.pdf.pdf](http://www.statewatch.org/media/documents/news/2019/feb/ep-study-interpol-red-notices.pdf.pdf).

83 European Parliament, 'Misuse of Interpol's Red Notices and impact on human rights – recent developments', January 2019, p. 19, available online at: [www.statewatch.org/media/documents/news/2019/feb/ep-study-interpol-red-notices.pdf.pdf](http://www.statewatch.org/media/documents/news/2019/feb/ep-study-interpol-red-notices.pdf.pdf).

84 European Parliament, 'Misuse of Interpol's Red Notices and impact on human rights – recent developments', January 2019, p. 18, available online at: [www.statewatch.org/media/documents/news/2019/feb/ep-study-interpol-red-notices.pdf.pdf](http://www.statewatch.org/media/documents/news/2019/feb/ep-study-interpol-red-notices.pdf.pdf).

60. Once an alert is disseminated, it is for each receiving country to decide how to respond to the information.<sup>85</sup> In certain jurisdictions, the receipt of a notice alone can lead to automatic arrest – these include, or have previously included, Georgia, Italy, Lebanon, Poland and Spain.<sup>86</sup>
61. INTERPOL Red Notices can have a profound impact on journalists seeking safe refuge abroad: it can mean that a journalist who has successfully managed to leave their home country might be arrested and detained by another State's authorities, pursuant to a process that has been criticised for lacking satisfactory procedural safeguards. It took award-winning Venezuelan journalist, **Patricia Poleo (Case study VII)**, almost two years to persuade INTERPOL that a Red Notice, which led to her arrest in Peru, was politically motivated. Ms. Poleo had, at the time of her arrest, already been granted asylum by the United States.<sup>87</sup>

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85 Fair Trials, 'Defending Human Rights, Strengthening INTERPOL', last accessed October 2020, available online at: [www.fairtrials.org/wp-content/uploads/INTERPOL-Summary.pdf](http://www.fairtrials.org/wp-content/uploads/INTERPOL-Summary.pdf).

86 See Fair Trials, 'Strengthening respect for human rights strengthening INTERPOL', November 2013, available online at: [www.fairtrials.org/wp-content/uploads/Strengthening-respect-for-human-rights-strengthening-INTERPOL4.pdf](http://www.fairtrials.org/wp-content/uploads/Strengthening-respect-for-human-rights-strengthening-INTERPOL4.pdf). See, for example, the case of Mehdi Khosravi, a blogger and opposition activist who was arrested in Italy in August 2016 on the basis of a Red Notice sought by Iran that had been issued against him: European Parliament, 'Misuse of Interpol's Red Notices and impact on human rights – recent developments', January 2019, p. 42, available online at: [www.statewatch.org/media/documents/news/2019/feb/ep-study-interpol-red-notices.pdf.pdf](http://www.statewatch.org/media/documents/news/2019/feb/ep-study-interpol-red-notices.pdf.pdf); see also the case of Petr Silaev who was arrested in Spain on account of an INTERPOL alert instigated by Russia, despite having been granted asylum in Finland. His request for deletion of the Diffusion on Article 3 grounds was denied and was only removed following a Presidential amnesty in Russia: Fair Trials, 'Dismantling the Tools of Oppression: Ending the Misuse of INTERPOL', October 2018, p. 22, available online at: [www.fairtrials.org/sites/default/files/publication\\_pdf/Dismantling%20the%20tools%20of%20oppression.pdf](http://www.fairtrials.org/sites/default/files/publication_pdf/Dismantling%20the%20tools%20of%20oppression.pdf); see also Politico, Diego Torres, 'A warning to Turkish dissidents: Don't go to Spain - Spain is accused of not evaluating extradition requests on human rights ground', 29 August 2017, available online at: [www.politico.eu/article/dogan-akhanli-spain-arrest-warning-to-turkish-dissidents](http://www.politico.eu/article/dogan-akhanli-spain-arrest-warning-to-turkish-dissidents), which details the case of two Turkish journalists' automatic arrests and detention in Spain.

87 In 2015 INTERPOL adopted a new refugee policy with the aim of enabling removal of a Red Notice where an individual is a refugee under the 1951 Refugee Convention. However, it has been suggested that this policy has not been adequately implemented and, in any event, it does not apply to those who fall outside the remit of the Refugee Convention: see Fair Trials, 'Dismantling the Tools of Oppression', October 2018, pp. 56-57, available online at: [www.fairtrials.org/sites/default/files/publication\\_pdf/Dismantling%20the%20tools%20of%20oppression.pdf](http://www.fairtrials.org/sites/default/files/publication_pdf/Dismantling%20the%20tools%20of%20oppression.pdf); see also European Parliament, 'Misuse of Interpol's Red Notices and impact on human rights – recent developments', January 2019, pp. 19-20, available online at: [www.statewatch.org/media/documents/news/2019/feb/ep-study-interpol-red-notices.pdf.pdf](http://www.statewatch.org/media/documents/news/2019/feb/ep-study-interpol-red-notices.pdf.pdf).

## Case study VII: Patricia Poleo's arrest in Peru on the basis of a Red Notice sought by Venezuela



- Patricia Poleo is an award-winning Venezuelan journalist and an outspoken critic of the Venezuelan Government. As a result of her reporting, Ms. Poleo has received numerous threats to her life and has been the subject of a false murder allegation.
- Following Ms. Poleo's broadcasting of a video about conversations between the Venezuelan Army and the Colombian guerilla FARC, the offices of the journal *Así es la noticia* were attacked with an explosive tossed by two persons on a motorcycle, following which the Inter-American Commission on Human Rights recommended measures be taken to protect Ms. Poleo and her colleagues.
- Ms. Poleo eventually left Venezuela and was granted asylum in the United States. In 2010, Ms. Poleo was arrested while on a trip to Peru as a result of an INTERPOL Red Notice requested by the Venezuelan authorities.
- It took Ms. Poleo 18 months to persuade INTERPOL that the Red Notice for her arrest had been sought on impermissible (politically motivated) grounds.

Sources: SunSentinel, 'Media are under attack', 18 April 2002, available online at: [www.sun-sentinel.com/news/fl-xpm-2002-04-18-0204170624-story.html](http://www.sun-sentinel.com/news/fl-xpm-2002-04-18-0204170624-story.html); CPJ, 'Attacks on the Press 2002: Venezuela', 31 March 2003, available online at: <https://cpj.org/2003/03/attacks-on-the-press-2002-venezuela>; The New York Times, 'The Misuse of Interpol's Database', 11 November 2015, available online at: [www.nytimes.com/2015/11/11/opinion/the-misuse-of-interpols-database.html](http://www.nytimes.com/2015/11/11/opinion/the-misuse-of-interpols-database.html); Fair Trials, 'Patricia Poleo', 5 April 2018, available online at: [www.fairtrials.org/case-study/patricia-poleo](http://www.fairtrials.org/case-study/patricia-poleo).

62. Patricia Poleo's case is far from an isolated example. In its Resolution 2161 titled '*Abusive recourse to the Interpol system: the need for more stringent legal safeguards*', the Council of Europe's Parliamentary Assembly noted that:<sup>88</sup>

*'Red Notices have a serious negative impact on the human rights of targeted persons, including the rights to liberty and security and the right to a fair trial. Red Notices should therefore be requested by National Central Bureaus (NCBs) and circulated by Interpol only when there are serious grounds for suspicion against the targeted person. These grounds should be verified following procedures designed to minimise the possibility for abuse, without hindering international police co-operation in the vast majority of legitimate cases...'*

*'Targeted persons cannot successfully challenge Red Notices before any national or international courts. This jurisdictional immunity can only be justified insofar as an internal appeals mechanism provides an effective remedy, in accordance with applicable human rights standards. In this respect, Interpol's Commission for the Control of Files (CCF) has been criticised for being ill-equipped to deal with the large and growing number of complaints and their complexity.'*

63. A further form of post-relocation persecution and harassment is the use of extradition requests brought against journalists, the purpose of which is to secure the return of the journalist to their home State.<sup>89</sup>
64. Extradition processes may be initiated by INTERPOL notices or by one sovereign jurisdiction making a formal request to another sovereign jurisdiction. An extradition process is generally, but not always, governed by treaty. After a request is made, an arrest warrant will generally be obtained by the requested State and the person arrested will be brought before a competent court.
65. Despite the legitimate function of extradition requests in bringing criminals to justice, it is not uncommon for extradition requests to be used with persecutory intent against journalists, especially for offences of a political nature.<sup>90</sup> Even when INTERPOL has removed a search request and a requested State has denied extradition, the requesting State may send repeated requests for extradition which means that journalists still could face arrest and the threat of extradition when crossing borders.<sup>91</sup>
66. While some jurisdictions prohibit extradition for political offences and/or those with a political motive,<sup>92</sup> as the case of **Julian Assange (Case study XV)**<sup>93</sup> demonstrates, establishing the political nature of the offence or the political motive behind prosecution may not always be straightforward. Journalists who have relocated to escape threats at home may eventually be sent back in the face of those same threats.

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88 Council of Europe Parliamentary Assembly, '*Abusive recourse to the Interpol system: the need for more stringent legal safeguards* Resolution 2161', 26 April 2017, paras. 5-6, available online at: <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=23714&lang=en>.

89 '*Extradition is the formal process involving the surrender of a person by one State (the "requested State") to the authorities of another State (the "requesting State") for the purpose of criminal prosecution or the enforcement of a sentence*': UNHCR, '*Guidance Note on Extradition and International Refugee Protection*', April 2008, p. 4, available online at: [www.refworld.org/pdfid/481ec7d92.pdf](http://www.refworld.org/pdfid/481ec7d92.pdf).

90 UNHCR, '*Guidance Note on Extradition and International Refugee Protection*', April 2008, at p. 36, available online at: [www.refworld.org/pdfid/481ec7d92.pdf](http://www.refworld.org/pdfid/481ec7d92.pdf).

91 Igor Savchenko and Kateryna Savchenko, '*They've come for you. Misuse of extradition procedures, unlawful expulsions and kidnappings of victims politically motivated prosecution*', 25 February 2019, available online at: <https://en.odfoundation.eu/a/9105,theyve-come-for-you-misuse-of-extradition-procedures-unlawful-expulsions-and-kidnappings-of-victims-politically-motivated-prosecution>.

92 See, for example, the 1957 European Convention on Extradition, Article 3: '*(1) Extradition shall not be granted if the offence in respect of which it is requested is regarded by the requested Party as a political offence or as an offence connected with a political offence*' and '*(2) The same rule shall apply if the requested Party has substantial grounds for believing that a request for extradition for an ordinary criminal offence has been made for the purpose of prosecuting or punishing a person on account of his race, religion, nationality or political opinion, or that that person's position may be prejudiced for any of these reasons*'.

93 See **Case study XV (Assange)** at p. 80.

## F. Lack of protection from the State

67. Data from CPJ indicates that between the years of 1992 and 2019, only 482 out of the 1,365 instances where journalists were killed involved the suspected perpetrator being a government or military official. The remaining 65 per cent of perpetrators were made up of criminal groups, local residents, mobs, paramilitary groups, other political groups and unknown sources.<sup>94</sup> In 2019, RSF reported that at least 57 journalists were being held hostage by non-State actors.<sup>95</sup>
68. In some cases, these non-State actors will be acting at the behest of a State.<sup>96</sup> In other instances, a State will simply assume the position of complicit bystander, often in violation of its positive obligations under international law.<sup>97</sup> The Director-General of UNESCO has noted that impunity for the perpetrators of violence against journalists remains the rule rather than the exception: statistics from the last decade indicate that approximately only one in every ten cases ends in conviction.<sup>98</sup> Similarly, in its 2019 Annual Report, the Partner Organisations to the Council of Europe Platform to Promote the Protection of Journalism and Safety of Journalists noted that impunity, defined as *'the failure by state authorities to identify, prosecute and punish all those, including the assailants and masterminds, responsible for crimes of violence against journalists'*, has become a *'new normal'*.<sup>99</sup>
69. The gunning down of Pakistani journalist, **Sohail Khan (Case study VIII)**, on the streets of Haripur in 2018 on the same day that he sought police protection following threats he had received for his work, provides another tragic example of a journalist facing the sort of threat that has prompted other journalists to seek relocation.

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94 CPJ, 'Explore CPJ's database of attacks on the press', last accessed October 2020, available online at: <https://cpj.org/data>.

95 RSF, 'Worldwide Round-up of journalists killed, detained, held hostage, or missing in 2019', 2019, p. 20, available online at: [https://rsf.org/sites/default/files/rsf\\_2019\\_en.pdf](https://rsf.org/sites/default/files/rsf_2019_en.pdf).

96 See the following case examples where the assailants are suspected to have had links with the State or its representatives: CPJ, 'Aiyathurai Nadesan', last accessed October 2020, available online at: <https://cpj.org/data/people/ayathurai-nadesan>; CPJ, 'Ahmed Hussein-Suale Divela', last accessed October 2020, available online at: <https://cpj.org/data/people/ahmed-hussein-suale-divela>; CPJ, 'Leslie Ann Pamela Montenegro del Real', last accessed October 2020, available online at: <https://cpj.org/data/people/leslie-ann-pamela-montenegro-del-real>.

97 This includes the right to freedom of expression and the right to life of journalists. States are under a positive obligation to take measures to protect the right to life of journalists. According to the UN Human Rights Committee in its General Comment No. 36 on the Article 6 Right to Life, para. 21, this duty is derived under the ICCPR from *'article 2, paragraph 1, when read in conjunction with article 6, as well as from the specific duty to protect the right to life by law which is articulated in the second sentence of article 6.'* State parties must *'take adequate preventive measures in order to protect individuals against reasonably foreseen threats of being murdered or killed by criminals and organized crime or militia groups, including armed or terrorist groups.'* See, for example, ECtHR, *Affaire Dink c. Turquie*, App. nos. 2668/07, 6102/08, 30079/08, 7072/09, 7124/09, 14 September 2010. Mr. Dink was the Managing Editor of Agos newspaper, until he was shot and killed in 2007 outside the newspaper's offices in Istanbul. In 2010, the ECtHR held that Turkey had failed in its duty to protect Mr. Dink's life, violating Article 2 (Right to Life) and the State's positive obligations under Article 10 (Freedom of Expression); see also Columbia University Global Freedom of Expression, 'Dink v. Turkey', last accessed October 2020, available online at: <https://globalfreedomofexpression.columbia.edu/cases/dink-v-turkey>; see also CPJ, 'Hrant Dink', last accessed October 2020, available online at: <https://cpj.org/data/people/hrant-dink>.

98 UNESCO, '2018 DG Report on the Safety of Journalists and the Danger of Impunity, Document CI-18/COUNCIL-31/6/REV.2', p. 24, available online at: <https://unesdoc.unesco.org/ark:/48223/pf0000265828>.

99 Council of Europe, 'Democracy at Risk: Threats and Attacks against Media Freedom in Europe 2019 Annual Report', February 2019, pp. 9 and 15, available online at: <https://rm.coe.int/annual-report-2018-democracy-in-danger-threats-and-attacks-media-freed/1680926453>.

## Case study VIII: Sohail Khan shot and killed in Pakistan



- Sohail Khan was a Pakistani journalist and a reporter for the daily K2 Times and AVT television channel.
- In 2018, Mr. Khan wrote a story about a drug mafia in Pakistan and started to receive threats to his life.
- On 16 October 2018, Mr. Khan filed an application with local police requesting protection. However, after filing that application, he was shot dead while driving in Haripur, Khyber Pakhtunkhwa province in Pakistan.
- On 17 October 2018, the police said that he had been killed because of his reporting and that they were searching for Ali Sher and Himayun Iqbal, the sons of the jailed drug mafia leader who had been the subject of Mr. Khan's reporting.
- On 23 October 2018, the Director-General of UNESCO called on the Pakistani authorities to begin an investigation into the killing. The next day Mr. Iqbal was arrested while trying to flee to Iran. The status of any ongoing judicial process is sufficiently unclear that CPJ has classified the case as one of 'complete impunity'.

Sources: CPJ, 'Gunmen in Pakistan kill K2 Times reporter', 17 October 2018, available online at: <https://cpj.org/2018/10/gunmen-in-pakistan-kill-k2-times-reporter.php>; UNESCO, 'Director-General urges investigation into killing of journalist Sohail Khan in Pakistan', 23 October 2018, available online at: <https://en.unesco.org/news/director-general-urges-investigation-killing-journalist-sohail-khan-pakistan>; SAMAA, Noor Ul Huda Shaheen, 'Man accused of killing Haripur journalist arrested near Chaman border', 24 October 2018, available online at: [www.samaa.tv/news/2018/10/man-accused-of-killing-haripur-journalist-arrested-near-chaman-border](http://www.samaa.tv/news/2018/10/man-accused-of-killing-haripur-journalist-arrested-near-chaman-border); CPJ, 'Sohail Khan – Killed', last accessed October 2020, available online at: <https://cpj.org/data/people/sohail-khan>.

### G. Persecution of family members/dependents

70. Journalists are rarely the isolated targets for the work they undertake. Family members and dependants are also often subject to persecution, intimidation and/or harassment as punishment for their relationship with the journalist. This persecution can include threats, both online and offline, and physical violence itself,<sup>100</sup> as well as other measures such as travel restrictions. Often the immediate family of a journalist becomes a primary target for the authorities where that journalist has successfully relocated, as was the case for **Humayra Bakhtiyar (Case study IX)**.

<sup>100</sup> UNESCO, 'World Trends in Freedom of Expression and Media Development Global Report 2017/2018', 2018, p. 152, available online at: <https://unesdoc.unesco.org/ark:/48223/pf0000261065>; see, for example, the case of journalists working for the BBC Persian Service whose families residing in Iran have faced harassment and intimidation from Iranian authorities. These journalists faced threats (including death threats), criminal investigations and harassments and in some cases, their family members were arbitrarily detained and held in degrading conditions, being ordered to tell their relatives to stop working for the BBC. In one case, BBC journalist Rana Rahimpour received a threat that she and her family would be murdered: see UN News, 'Iran: BBC and other broadcast journalists harassed; families threatened – UN experts', 11 March 2020, available online at: <https://news.un.org/en/story/2020/03/1059251>.

## Case study IX: The harassment of Humayra Bakhtiyar and her family in Tajikistan



- Humayra Bakhtiyar is an investigative journalist from Tajikistan who reports on issues of government corruption and nepotism.
- In 2013, Ms. Bakhtiyar received messages from the Tajik security police telling her that she had to be careful in what she was reporting on. These threats emerged around the time of the presidential election. The secret police also contacted Ms. Bakhtiyar's Chief Editor to convey the same message.
- The security police eventually came to the newspaper's offices and interrogated Ms. Bakhtiyar about her family, albeit it was apparent that the officer already knew extensive details about her personal and family life. Ms. Bakhtiyar was then frequently followed and harassed.
- On social media, pro-government accounts posted rumours and innuendo about Ms. Bakhtiyar and her family. This included the rumour that she had developed psychological problems due to growing up with a stepmother.
- In 2015, fearing for her safety, Ms. Bakhtiyar moved to Germany through a scholarship at Deutsche Welle and was granted asylum. In 2018, she was charged in Tajikistan with making '*public calls for the violent overthrow of the constitutional order in Tajikistan*', a crime carrying a sentence of up to 15 years.
- In 2019, Ms. Bakhtiyar revealed that Tajik authorities had summoned her unwell father to talk with them on her birthday and asked that he convince his daughter to return to Tajikistan or face losing his job as a schoolteacher. The threats continued, with police later calling her father to tell him that he could be arrested. In June 2019, the OSCE Representative on Freedom of the Media '*called on authorities to investigate reports of intimidation*' of Ms. Bakhtiyar's family members. The US Mission to the OSCE similarly called on the authorities to investigate these incidents.

Sources: Index on Censorship, 'Project Exile: Tajikistan harasses reporter into exile', 26 June 2019, available online at: [www.indexoncensorship.org/2019/06/project-exile-tajikistan-harasses-reporter-into-exile](http://www.indexoncensorship.org/2019/06/project-exile-tajikistan-harasses-reporter-into-exile); RadioFreeEurope RadioLiberty, Quishloq Ovozi, 'Tajik Officials Use Family Members to Pressure Critics to Return', 26 June 2019, available online at: [www.rferl.org/a/tajik-officials-use-family-members-to-pressure-critics-to-return/30022245.html](http://www.rferl.org/a/tajik-officials-use-family-members-to-pressure-critics-to-return/30022245.html); CPJ, 'Tajik authorities harass journalist Humayra Bakhtiyar and family', 18 July 2019, available online at: <https://cpj.org/2019/07/tajik-authorities-harass-journalist-humayra-bakhti>; Human Rights Watch, 'World Report 2020, Tajikistan – Events of 2019', 2020, available online at: [www.hrw.org/world-report/2020/country-chapters/tajikistan#](http://www.hrw.org/world-report/2020/country-chapters/tajikistan#); United States Mission to the OSCE, 'Response to the Report by the OSCE Programme Office in Dushanbe, Ambassador Valeriu Chiveri', 21 May 2020, available online at: [www.osce.org/files/f/documents/2/7/453507.pdf](http://www.osce.org/files/f/documents/2/7/453507.pdf).



# Assessment of the current pathways and impediments to safe refuge for journalists at risk

71. Journalists who are left with no choice but to seek immediate relocation often do so on a temporary basis: the overarching desire is to return to their home country and to resume their work as soon as the risk subsides, or it becomes safe for them to return. Sometimes that is simply impossible, necessitating a relocation which is longer term, sometimes permanent.
72. The individual circumstances of each journalist will, of course, vary: from the reporter working for an international media organisation seeking a move to another bureau, to the freelance journalist seeking to apply for a short-term academic or practice fellowship abroad, to the government critic columnist or editor who is unable to return until there is a change of government at home.
73. The pathways to safe refuge open to such, and other, journalists at risk are few in number. There may be shorter-term or temporary solutions such as:
  - (i) Work permits, visas for study, teaching, or scholarship, visas recognising 'extraordinary talent' or fellowship programmes at universities and NGOs ('**the Non-Humanitarian Pathways**');
  - (ii) Short-term/humanitarian visas ('**the Temporary Humanitarian Pathways**'); and
  - (iii) **Diplomatic Asylum**.
74. In addition, there are also two further routes, offering potentially longer-term/permanent relocation options, in the form of: (iv) **Public-Private Sponsorship Programmes**; and (v) **International Protection**.
75. For the avoidance of doubt, the granting of honorary citizenship to a journalist is *not* considered a viable alternative to any of these pathways: the practice varies greatly between States but is generally a symbolic act, i.e. one that does not grant the rights and privileges that would be conferred under ordinary citizenship and, therefore, one that does not provide any recourse to a journalist at risk.<sup>101</sup>
76. The five pathways identified in this Report, and the associated terminology used to refer to or describe them, vary significantly from State to State. These are also not necessarily mutually exclusive routes to safe refuge: for instance, a journalist who has secured a temporary move to country X is not then automatically precluded from eventually seeking a longer-term stay in country X or a permanent move to country Y.
77. Each pathway is considered and assessed in turn from the specific perspective of the journalist at risk in sub-sections A to E, culminating in sub-section F which seeks to identify common obstacles and practical impediments across the different pathways.

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101 See, for example, Honorary Citizenship as granted by the United States, which does not carry with it the rights and privileges of ordinary citizenship, and does not confer any special entry, travel or immigration benefits upon the honouree or the honouree's relatives and dependents: U.S. Department of State, '8 FAM 306.1 Honorary Citizenship', 5 June 2019, available online at: <https://fam.state.gov/FAM/08FAM/08FAM030601.html>. Since 1963, it has been bestowed on only eight individuals and requires an act of Congress and presidential assent. Honorary Canadian citizenship is also purely symbolic (conferring no substantive rights or privileges) and is granted by a joint resolution passed by the House of Commons and Senate: see Stephanie Levitz, 'Five things to know about honorary Canadian citizenship', 22 October 2014, available online at: <https://globalnews.ca/news/1628005/five-things-to-know-about-honorary-canadian-citizenship>. Ireland offers a rare example of where honorary citizenship bestowed on a foreign national confers full legal citizenship, including the rights to reside and vote in the country: see Section 12 of the Irish Nationality and Citizenship Act 1956, which allowed the President on the advice of the Government to '... grant Irish citizenship as a token of honour to a person, or the child or grandchild of a person who, in the opinion of the Government, has done signal honour or rendered distinguished service to the nation.' However, to date fewer than fifteen individuals have had honorary Irish citizenship conferred on them.

## A. Non-Humanitarian Pathways: work permits, extraordinary talent visas, visas for study, teaching and scholarship or fellowship programmes

### i. The current system

78. It is often impossible for a journalist at risk to move to safe refuge without a visa. And while the risk to that journalist's safety may have been the proximate cause for the journalist's decision to leave the home country, that is not necessarily something the journalist will wish to signal to the very State agents persecuting them.
79. For that reason, journalists at risk often explore the viability of a move to another bureau, or a new job abroad, or a year or two of study, teaching or research in the context of an existing or new journalistic project. These Non-Humanitarian Pathways hold the advantage of offering journalists at risk the opportunity to continue their journalistic work, in one form or another, while the threat to their safety in their home country subsides.
80. Pursuing one of these Non-Humanitarian Pathways does not necessarily, of course, preclude eventual recourse to a humanitarian pathway or a more long-term solution in due course, if required. In 2018, the OECD and the UNHCR prepared a study on third country solutions in which they considered family reunification, study options and employment mobility as complementary pathways for five refugee populations: Afghanistan, Eritrea, Iraq, Somalia and the Syrian Arab Republic.<sup>102</sup> The study found that between 2010 and 2017, there were 566,900 first residence permits granted in OECD countries to these populations for family, work or education-related reasons, whereas only 350,400 persons from these populations arrived in those countries through resettlement processes.<sup>103</sup>

### 1. Work permits and visas

81. The availability of work permits in other countries ultimately depends on the specific qualifications and individual circumstances of the applicant journalist.<sup>104</sup>
82. **Visas for skilled workers:** A number of countries offer specific work permits for 'skilled workers'.<sup>105</sup> Journalists may therefore be able to apply for work visas based on their qualifications, since a trained journalist is generally considered to be sufficiently skilled to meet the relevant thresholds. In Canada, for

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102 OECD-UNHCR, 'Study on third country solutions for refugees: family reunification, study programmes and labour mobility', December 2018, available online at: [www.unhcr.org/protection/resettlement/5c07a2c84/safe-pathways-for-refugees.html](http://www.unhcr.org/protection/resettlement/5c07a2c84/safe-pathways-for-refugees.html).

103 OECD-UNHCR, 'Study on third country solutions for refugees: family reunification, study programmes and labour mobility', December 2018, p. 13, available online at: [www.unhcr.org/protection/resettlement/5c07a2c84/safe-pathways-for-refugees.html](http://www.unhcr.org/protection/resettlement/5c07a2c84/safe-pathways-for-refugees.html). Note that during the relevant period, 890,000 persons were granted refugee status and 633,000 were granted complementary forms of protection.

104 The OECD-UNHCR study found that only four per cent of all family, work and study permits granted to the five studied populations between 2010-2017 were composed of work permits: OECD-UNHCR, 'Study on third country solutions for refugees: family reunification, study programmes and labour mobility', December 2018, available online at: [www.unhcr.org/protection/resettlement/5c07a2c84/safe-pathways-for-refugees.html](http://www.unhcr.org/protection/resettlement/5c07a2c84/safe-pathways-for-refugees.html).

105 Note also that the European Commission is expecting to propose a new Skills and Talent Package that will include a number of legislative changes relating to the facilitation of the admission of workers of different skills levels to the EU. See European Commission, 'New Pact on Migration and Asylum: Questions and Answers', 23 September 2020, available online at: [https://ec.europa.eu/commission/presscorner/detail/en/qanda\\_20\\_1707#contains](https://ec.europa.eu/commission/presscorner/detail/en/qanda_20_1707#contains).

example, journalists are considered to be of 'Skill Level A' under the National Occupational Classification system which enables them to meet the minimum threshold for Federal Skilled Workers.<sup>106</sup>

83. In order to apply for this type of visa, a journalist will generally need an employer willing to sponsor the journalist to work in that country. But even if they are able to find a sponsor, in certain countries, journalists may not be classified as professionals who are in shortage, and may therefore experience additional difficulties when applying for such visas.<sup>107</sup> In the UK, for instance, a visa application to work in an occupation that is included on the Tier 2 skilled worker visa shortage occupation list may be given priority over other Tier 2 skilled worker visa applications. As at October 2020, journalists, reporters or writers are not included on the list, meaning that they must pay higher visa application costs<sup>108</sup> and may encounter more complex application criteria and procedures.<sup>109</sup>
84. Some countries do have media-specific work visas. For example, the UK permits employees of an overseas newspaper, news agency or broadcasting organisation who are posted on a long-term assignment to the UK to apply for what is known as a representative of an overseas business visa.<sup>110</sup> To be eligible for this visa, applicants must be from outside the European Economic Area and Switzerland, have sufficient financial means to support themselves and meet the English language requirement.<sup>111</sup>
85. **Extraordinary talent visas:** Certain countries also offer visas to individuals who are deemed to possess extraordinary abilities or achievements. For instance:
  - o In the United States, the O-1 Visa may be granted to an 'individual who possesses extraordinary ability in the sciences, arts, education, business, or athletics, or who has a demonstrated record of extraordinary achievement in the motion picture or television industry and has been recognised nationally or internationally for those achievements.'<sup>112</sup> Applicants must be relocating to the United States in order to continue work in their area of 'extraordinary ability' and must obtain employment in the United States. The employer must provide a written advisory opinion about the applicant from a peer group, or from an individual, with expertise in the relevant area of 'extraordinary ability', evidence of the terms of employment and, where relevant, a copy of an itinerary for any events or activities. The initial period of stay on this visa is up to three years, which may be extended. As at

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106 See Government of Canada, 'Eligibility to apply as a Federal Skilled Worker (Express Entry)', last accessed October 2020, available online at: [www.canada.ca/en/immigration-refugees-citizenship/services/immigrate-canada/express-entry/eligibility/federal-skilled-workers.html#minimum](http://www.canada.ca/en/immigration-refugees-citizenship/services/immigrate-canada/express-entry/eligibility/federal-skilled-workers.html#minimum); Government of Canada, 'Find your NOC', last accessed October 2020, available online at: [www.canada.ca/en/immigration-refugees-citizenship/services/immigrate-canada/express-entry/eligibility/find-national-occupation-code.html](http://www.canada.ca/en/immigration-refugees-citizenship/services/immigrate-canada/express-entry/eligibility/find-national-occupation-code.html). See also in Australia – 'journalists and other writers' are listed on the relevant skilled occupation list which forms part of the basis for eligibility of several work visas such as the Skilled Nominated Visa (190) and the Temporary Skill Shortage Visa (482): Australian Government Department of Home Affairs, 'Skilled Occupation List', last accessed October 2020, available online at: <https://immi.homeaffairs.gov.au/visas/working-in-australia/skill-occupation-list>. In the UK, for example, visa fee waivers for human rights-based applications do not appear to apply to these types of visas: see UK Home Office, 'Fee waiver: Human Rights-based and other specified applications', 18 June 2020, available online at [www.gov.uk/government/publications/applications-for-a-fee-waiver-and-refunds](http://www.gov.uk/government/publications/applications-for-a-fee-waiver-and-refunds).

107 See, for example, the UK Tier 2 (Visa for Skilled Workers) Shortage Occupation List.

108 Gov.UK, 'Immigration Rules Appendix K: shortage occupation list', last accessed October 2020, available online at: [www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-k-shortage-occupation-list](http://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-k-shortage-occupation-list); Gov.UK, 'General work visa (Tier 2)', last accessed October 2020, available online at: [www.gov.uk/tier-2-general](http://www.gov.uk/tier-2-general).

109 See KPMG, 'United Kingdom – Expansion of Shortage Occupation List for Immigration Purposes - Advantages of Being Able to Utilise Positions Included on SOL', 25 October 2019, available online at: <https://home.kpmg/xx/en/home/insights/2019/10/flash-alert-2019-163.html#01>.

110 Gov.UK, 'Representative of an Overseas Business Visa', last accessed October 2020, available online at: [www.gov.uk/representative-overseas-business](http://www.gov.uk/representative-overseas-business).

111 Gov.UK, 'Representative of an Overseas Business Visa', last accessed October 2020, available online at: [www.gov.uk/representative-overseas-business/eligibility](http://www.gov.uk/representative-overseas-business/eligibility).

112 See U.S. Citizenship and Immigration Services (USCIS), 'O-1 Visa: Individuals with Extraordinary Ability or Achievement', last accessed October 2020, available online at: [www.uscis.gov/working-united-states/temporary-workers/o-1-visa-individuals-extraordinary-ability-or-achievement](http://www.uscis.gov/working-united-states/temporary-workers/o-1-visa-individuals-extraordinary-ability-or-achievement). The United States also offers a permanent visa option – the 'Employment-Based Immigration: First Preference EB-1' visa – for those with an extraordinary ability, outstanding professors and researchers, or certain multinational executives or managers: see USCIS, 'Employment-Based Immigration: First Preference EB-1', last accessed October 2020, available online at: [www.uscis.gov/working-united-states/permanent-workers/employment-based-immigration-first-preference-eb-1](http://www.uscis.gov/working-united-states/permanent-workers/employment-based-immigration-first-preference-eb-1).

October 2020, the processing of an application for this type of visa could take anywhere from two weeks to three months.<sup>113</sup>

- The United Kingdom operates a Global Talent visa for a leader or potential leader in the fields of academia or research, arts and culture and digital technology. Applications are sent for endorsement to a UK organisation (the 'endorsing body') with expertise in the relevant field. They are reviewed by the applicable Royal Society for individual fellowships in science and medicine; The Royal Academy of Engineering for engineering; The British Academy for humanities; Tech Nation for digital technology; Arts Council England for arts and culture; British Fashion Council for fashion design; Royal Institute of British Architects (RIBA) for architecture and Producers Alliance for Cinema and Television (PACT) for film and television. The endorsement decision from these institutions can take up to eight weeks and following successful endorsement, an applicant can only apply for a visa three months before travel, with a decision on the visa generally provided within three weeks if the applicant is outside the UK and within eight weeks if the applicant is inside the UK.<sup>114</sup> It may be possible to pay for a faster decision. There is also a healthcare surcharge to be paid on application.<sup>115</sup>
- Australia issues 'Distinguished Talent Visas' to those who have an internationally-recognised record of exceptional and outstanding achievement in a profession, sport, the arts or academia and research. The applicant needs to be nominated for the visa by an Australian (or eligible New Zealand) citizen, permanent resident or Australian organisation with a national reputation in the area of talent.<sup>116</sup>

## **2. Student and teaching visas**

86. Pursuing further study abroad is an option that might be open to a journalist at risk.

87. In order to obtain a student, researcher or teaching visa, applicants are generally required to, among other things:<sup>117</sup>

- secure a position in a course offered by a recognised educational institution (including by demonstrating the necessary language skills) and provide evidence of this;
- establish that they have sufficient funds to support themselves (and any spouse and/or children joining them) without recourse to employment or public funds; and
- attend an interview.

## **3. Fellowships, scholarships and emergency financial assistance**

88. Several NGOs run fellowship or scholarship programmes, the purpose of which is to facilitate the relocation of journalists at risk, while assisting them to continue to work or study in their field.

89. Journalists apply to these programmes and NGOs generally place successful journalists with hosts such as higher-learning institutions, research institutions, colleges, universities, newsrooms and other relevant

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113 USCIS, 'Check Case Processing Times', last accessed October 2020, available online at: <https://egov.uscis.gov/processing-times>.

114 Gov.UK, 'Apply for the Global Talent Visa', last accessed October 2020, available online at: [www.gov.uk/global-talent](http://www.gov.uk/global-talent); Gov.UK, 'Global Talent Code of Practice for Endorsing Bodies', February 2020, available online at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/867337/Global\\_Talent\\_Code\\_of\\_Practice\\_-\\_February\\_2020.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/867337/Global_Talent_Code_of_Practice_-_February_2020.pdf).

115 Gov.UK, 'Apply for the Global Talent Visa', last accessed October 2020, available online at: [www.gov.uk/global-talent](http://www.gov.uk/global-talent).

116 See Australian Government Department of Home Affairs, 'Distinguished Talent visa', last accessed October 2020, available online at: <https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/distinguished-talent-124>.

117 See, for example, U.S. Department of State, 'Student Visa', last accessed October 2020, available online at: <https://travel.state.gov/content/travel/en/us-visas/study/student-visa.html>; Gov.UK, 'Short-term study visa', last accessed October 2020, available online at: [www.gov.uk/study-visit-visa/eligibility?step-by-step-nav=4ab05a9b-a933-4bb1-ae61-b9ab903b8805](http://www.gov.uk/study-visit-visa/eligibility?step-by-step-nav=4ab05a9b-a933-4bb1-ae61-b9ab903b8805).

organisations. Depending on the nature of the fellowship or scholarship programme, successful journalist applicants are generally required to obtain work or study visas, most often with the assistance of the NGO or the host organisation.

90. Examples of such programmes include:

- **Institute of International Education Scholar Rescue Fund:** IIE provides fellowships for professors, researchers and public intellectuals who are threatened and displaced. Since 2002, IIE has supported 879 scholars from 60 countries in partnership with 422 host institutions in 47 countries.<sup>118</sup>
- **English PEN Writers in Residence Programme:** English PEN operates a programme that grants international writers, including journalists, with a bespoke residency with the involvement of academic institutions and media organisations. The programme does not currently appear to be accepting new applications but instead works with NGO partners (PEN International, ARTICLE 19, CPJ, RSF and Free Word) to identify writers who would benefit.<sup>119</sup>
- **Knight International Journalism Fellowships:** The International Center for Journalists offers fellowships to journalists who have demonstrated leadership qualities, with the experience and skills necessary to lead their fellowship projects. The fellowship lasts for at least a year and may be extended.<sup>120</sup>
- **Brown University International Writers Project:** Brown University offers fellowships covering the costs of relocation to the university and the writer's expenses in the United States, while providing an office on campus for ten months. The fellowship is for writers '*who face personal danger and threats to their livelihood*' and who are '*actively prevented from pursuing free expression in their literary art*'.<sup>121</sup>
- **Woodrow Wilson International Center for Scholars:** The Center grants fellowships to scholars, practitioners, journalists and public intellectuals, hosting approximately 160 scholars each year who conduct independent research on national and/or international issues addressing key public policy challenges.<sup>122</sup>
- **William Southam Journalism Fellowships:** The Southam Journalism Fellowships annually offer three or more mid-career journalists (with at least five years' experience) the opportunity to spend one academic year at Massey College at the University of Toronto. Fellows are provided with a monthly stipend and have their university fees and travel expenses covered.<sup>123</sup>
- **European Centre for Press and Media Freedom's Journalists-in-Residence Programme:** The ECPMF's Journalists-in-Residence programme offers three fellowships of up to six months to journalists and other media professionals from European Union Member States and Candidate Countries with at least three years of experience and proficiency in English or German. The journalists are provided with

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118 See Scholar Rescue Fund, 'Fellowships For Threatened Scholars Around The World', last accessed October 2020, available online at: [www.scholarrescuefund.org](http://www.scholarrescuefund.org).

119 English PEN, 'Writers in Residence', last accessed October 2020, available online at: [www.englishpen.org/writers-in-residence](http://www.englishpen.org/writers-in-residence).

120 See ICFJ, 'ICFJ Knight Fellowships - Apply Now', last accessed October 2020, available online at: [www.icfj.org/our-work/knight/icfj-knight-fellowships-apply-now](http://www.icfj.org/our-work/knight/icfj-knight-fellowships-apply-now).

121 See Brown University, 'International Writers Project', last accessed October 2020, available online at: [www.brown.edu/academics/literary-arts/international-writers-project](http://www.brown.edu/academics/literary-arts/international-writers-project).

122 See Wilson Center, 'Fellowships & Grants', last accessed October 2020, available online at: [www.wilsoncenter.org/fellowships-grants](http://www.wilsoncenter.org/fellowships-grants).

123 Massey College in the University of Toronto, 'William Southam Journalism Fellowships', last accessed October 2020, available online at: [www.masseycollege.ca/admissions/journalism-fellows](http://www.masseycollege.ca/admissions/journalism-fellows). See also McLaughlin Centre Science Journalism Fellowship and Gordon N. Fisher/JHR Journalism Fellowship referred to therein.

a furnished apartment, a monthly stipend and health insurance, as well as access to ECPMF's contacts and training sessions.<sup>124</sup>

91. Since 2006, an independent organisation of cities and regions has offered safe shelter to writers and artists at risk through the International Cities of Refuge Network (ICORN). PEN International and Sølvsberget, Stavanger Cultural Centre, Norway are partners of ICORN.
92. In the first instance, ICORN offers temporary protection that provides journalists with the option of returning to their home country after the completion of a two-year residency, if the threat in question has dissipated. Journalists might have the option of making a claim for International Protection following the end of their residency or finding employment so as to continue their stay by extending their residency. The network and connections that ICORN provides can also make it easier for a journalist at risk to find longer-term work in the host city and thereby overcome many of the socio-economic difficulties related to relocation.<sup>125</sup>
93. ICORN notes that its response time regarding requests for placement depends on many factors, including the urgency of the situation, the volume of applications being handled, the number of other applicants waiting for a residency, verification of the applicant's story and contacting the applicant's references.<sup>126</sup> Sometimes visa issues act as a barrier to placing journalists in residencies.<sup>127</sup>

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124 ECPMF, 'ECPMF opens call for applications for the Journalists-in-Residence programme', last accessed October 2020, available online at: [www.ecpmf.eu/ecpmf-opens-call-for-applications-for-the-journalists-in-residence-programme](http://www.ecpmf.eu/ecpmf-opens-call-for-applications-for-the-journalists-in-residence-programme).

125 For example, ICORN, alongside other partners, supported RSF Sweden in developing a year-long project 'Colleague to Colleague' to connect writers and journalists who moved to Sweden. ICORN writers and journalists in Sweden were 'offered a space at network meetings, training courses and participated in investigations related to the project': ICORN, 'Connecting colleagues in Sweden', 6 March 2020, available online at: [www.icorn.org/article/connecting-colleagues-sweden](http://www.icorn.org/article/connecting-colleagues-sweden).

126 ICORN, 'FAQ writers/artists at risk', last accessed October 2020, available online at: [www.icorn.org/faq-writersartists-risk](http://www.icorn.org/faq-writersartists-risk).

127 See, for example, ICORN, Elisabeth Dyvik, 'Providing residencies for persecuted writers and artists in Europe – Immigration Issues', p. 54, last accessed October 2020, available online at: [www.icorn.org/sites/default/files/visa\\_and\\_residence\\_permit\\_edy.pdf](http://www.icorn.org/sites/default/files/visa_and_residence_permit_edy.pdf), which states that ICORN is only able to place journalists who can already legally enter the UK (without the need to obtain a new visa/permit) since, in order to apply for a 'Permitted Paid Engagement' visa, ICORN writers would be required to demonstrate an intention to leave the UK after one month and in order to apply for an alternate visa, such as the Global Talent Visa, ICORN writers would need to prove a particular level of talent. ICORN explains that the inviting organisation is required to register with the UK Home Office, and should an ICORN writer overstay their visa or be rejected at the border for any reason, the organisation's status may be revoked; see also Gov.UK, 'Permitted Paid Engagement visa', last accessed October 2020, available online at: [www.gov.uk/permitted-paid-engagement-visa/eligibility](http://www.gov.uk/permitted-paid-engagement-visa/eligibility).

## Case study X: The International Cities of Refuge Network (ICORN)



- ICORN is an independent organisation of 70 cities and regions that offers refuge to writers, journalists and artists at risk, with the goal of advancing the right to freedom of expression. ICORN works closely with PEN International and its Writers in Prison Committee. ICORN's sponsors include the Municipality of Stavanger in Norway, the Swedish International Development Cooperation Agency, the Norwegian Ministry of Foreign Affairs and the Fritt Ord Foundation.
- ICORN is presently able to offer 15 to 20 residencies annually. Since its establishment in 2006, ICORN has provided shelter to approximately 200 writers, journalists and artists at risk.
- Successful applicants are generally offered a two-year residency in one of ICORN's cities and regions. An ICORN city must extend a formal invitation to the successful applicant, with some cities extending that invitation to the applicant's family as well.
- The ICORN city that accepts a successful applicant is responsible for their costs throughout the two-year period which may include: accommodation, a scholarship/grant to the writer, journalist or artist for the period of their stay, all travel expenses including fees for passports and visas, the salary of a coordinator who will work with the successful applicant on their integration, appropriate working and living conditions during the stay, available health and other insurance and access to resources that will enable the successful applicant to learn the language of the host State.
- The specific management of any single residency is left to the host city. ICORN has pointed to certain States that operate special conditions, for example:

**Denmark:** Denmark grants successful ICORN applicants residence permits for two years. The permit is renewable for a further two years. Although these ICORN residence permit holders are not given a work permit *per se*, they are free to work and receive remuneration provided that the work in question relates to their profession. ICORN has noted that the process to obtain the residence permit can take two months.

**Sweden:** Sweden provides two-year residence permits for successful ICORN applicants so long as the applicant is provided for financially. The permit can be extended for a further two years, subject to the same precondition. ICORN residents may be eligible for permanent residency in due course. Again, it can take two months for the successful ICORN applicant to receive their residence permit.

**Norway:** Norway accepts successful ICORN applicants as part of its annual refugee resettlement quota. For non-emergency cases, processing can take up to three weeks whereas emergency cases are processed in 48 hours. If entry under the resettlement quota is granted by the Norwegian Directorate of Immigration, the Directorate will organise and pay for a successful applicant's travel and the applicant will enter the country as a refugee. The applicant's family is usually able to join the applicant or apply for reunification at a later time. This system offers the most permanent solution for journalists at risk.

Sources: ICORN, 'Cities of Refuge', last accessed October 2020, available online at: [www.icorn.org/icorn-cities-refuge](http://www.icorn.org/icorn-cities-refuge); ICORN, 'FAQ City of Refuge', last accessed October 2020, available online at: [www.icorn.org/faq-city-refuge](http://www.icorn.org/faq-city-refuge); ICORN, 'FAQ writers/artists at risk', last accessed October 2020, available online at: [www.icorn.org/faq-writersartists-risk#tag14](http://www.icorn.org/faq-writersartists-risk#tag14); ICORN, Elisabeth Dyvik, 'Providing residencies for persecuted writers and artists in Europe – Immigration Issues', last accessed October 2020 available online at: [www.icorn.org/sites/default/files/visa\\_and\\_residence\\_permit\\_eddy.pdf](http://www.icorn.org/sites/default/files/visa_and_residence_permit_eddy.pdf).

94. In addition to offering fellowships and scholarships, a number of NGOs hold designated emergency funds for journalists. This includes: PEN International's PEN Emergency Fund;<sup>128</sup> PEN America Writers' Emergency Fund<sup>129</sup> and Endangered Writers' Fund; the International Press Institute's Press Freedom Fund;<sup>130</sup> Reporters Without Borders' Individual Support;<sup>131</sup> CPJ's Gene Roberts Fund for Emergency Assistance;<sup>132</sup> and the Media Freedom Rapid Response.<sup>133</sup>

## ii. *The key impediments within the current system: Non-Humanitarian Pathways*

- Requires multiple stages of applications, often determined too slowly to provide an effective remedy for the journalist at risk;
- Procedures can be complex and difficult to navigate;
- The cost can be considerable, and the need to meet certain financial thresholds can make access to such visas impossible in practice;
- Journalists must be able to find hosts willing and able to sponsor such visas; and, even then,
- A visa may be held up, or denied, because of a politically motivated persecution in the home State (e.g. criminal investigation or proceedings).

95. A journalist at risk must first secure an offer of work, or a position at an academic or other sponsoring institution, before commencing the application process for a suitable visa. This generally requires preparedness months, if not years, prior to any programme or employment commencement date. Journalists who do not speak a foreign language may be unable to enrol in a suitable course and those who do not have the benefit of scholarships, or support from fellowship schemes, are unlikely to have the financial means necessary to pursue study or research abroad.

96. Even once this initial, and often considerable, hurdle has been cleared, the visa application process too can be a very lengthy one. And, even then, a journalist who has been granted a visa will not be entitled to enter a host country, materially prior to the commencement of the employment, or further study, for which the visa has been granted.<sup>134</sup>

97. As the cases in this Report make all too plain, journalists at risk do not have the luxury of time. Nor is the period of danger or exposure to risk for an individual journalist likely to fit neatly into timetables set by academic institutions or fellowship programmes. The journalist cannot afford to wait and the cost of doing so has been very considerable to some of those who have tried.

98. Moreover, the financial costs of moving abroad for work or study can be considerable. For example, in the absence of a full scholarship (requiring another application process, with its own timetable) or tuition

128 PEN International, 'PEN Emergency Fund', last accessed October 2020, available online at: <https://pen-international.org/supporting-writers-in-exile/pen-emergency-fund>.

129 PEN America, 'Writers' Emergency Fund', last accessed October 2020, available online at: <https://pen.org/writers-emergency-fund>.

130 International Press Institute, 'Donate to the IPI Press Freedom Fund', last accessed October 2020, available online at: <https://ipi.media/support-us>.

131 RSF, 'Individual support', last accessed October 2020, available online at: <https://rsf.org/en/individual-support>.

132 CPJ, 'The Gene Roberts Fund for Emergency Assistance', last accessed October 2020, available online at: <https://cpj.org/emergency-response/the-gene-roberts-fund-for-emergency-assistance>.

133 Media Freedom Rapid Response, 'Supporting and protecting journalists and media workers in EU Member States and Candidate Countries', last accessed October 2020, available online at: [www.mfrr.eu](http://www.mfrr.eu).

134 For example, a journalist granted a Tier 2 (General) visa to the UK would only be permitted to enter the UK up to 14 days prior to the start date on their certificate of sponsorship: see Gov.UK, 'General work visa (Tier 2)', last accessed October 2020, available online at: [www.gov.uk/tier-2-general](http://www.gov.uk/tier-2-general).



waivers, or support from a fellowship scheme, journalists at risk applying for study visas are very unlikely to have the necessary means to pursue this course. In a similar vein, journalists at risk who do not speak a foreign language may be unable to avail from degree or scholarship options. In the case of work permits, journalists in need of urgent protection may have difficulty finding an employer that would be willing to undertake the administrative burden and incur the expense of assisting with their immigration applications.

99. With regard to special ability or talent work visas, the application of the threshold criteria is often such as to make recourse an illusory prospect even for a leading internationally-recognised journalist. By way of illustration, in the context of the US O-1 visa, the USCIS gives the example of a suitable applicant being a recipient of an internationally recognised award, 'such as the Nobel Prize'.<sup>135</sup> The *Columbia Journalism Review* has reported that some journalists applying for this visa have been asked why they do not have a Pulitzer prize, or why they were not earning more than, for example, US\$ 2,000 a month, if they were truly recognised in the field.<sup>136</sup>
100. Even journalists able to navigate all of these various impediments, must pass some form of character and security assessment at the visa application stage.<sup>137</sup> The fact that a journalist is the subject of a criminal investigation or prosecution in their home State will inevitably form a relevant factor in the assessment of their 'good character'.<sup>138</sup> Sometimes, the fact of that prosecution or investigation alone will lead to a suspension or stay of their application, pending the conclusion of the investigation or proceedings. That can take years and result in a journalist's conviction (making any subsequent travel even more difficult, if not impossible). At other times, the existence of an investigation or set of proceedings will lead to an outright (and unreviewable) visa denial. Put another way, the act of persecution in the home State – precipitating the desire on the part of the journalist to relocate – can also serve to make that relocation impossible.

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135 USCIS, 'Policy Manual – Chapter 4 – O-1 Beneficiaries', last accessed October 2020, available online at: [www.uscis.gov/policy-manual/volume-2-part-m-chapter-4](http://www.uscis.gov/policy-manual/volume-2-part-m-chapter-4).

136 Columbia Journalism Review, Amanda Darrach, 'It's getting more difficult for foreign journalists to work in the US', 12 September 2018, available online at: [www.cjr.org/analysis/journalist-visa.php](http://www.cjr.org/analysis/journalist-visa.php).

137 See discussion in **F. The current pathways: some common obstacles and challenges** at §225.

138 See, for example, Question 36 on Australian Form 80: Australian Government Department of Home Affairs, 'Personal particulars for assessment including character assessment', last accessed October 2020, available online at: <https://immi.homeaffairs.gov.au/form-listing/forms/80.pdf>. See also the relevant factors for the United States in USCIS, 'Policy Manual - Chapter 2 - Adjudicative Factors', last accessed October 2020, available online at: [www.uscis.gov/policy-manual/volume-12-part-f-chapter-2](http://www.uscis.gov/policy-manual/volume-12-part-f-chapter-2).

## Case study XI: Work transfer to France for journalist Taha Siddiqui from Pakistan



- Taha Siddiqui is an award-winning journalist from Pakistan. He has worked for France 24 and Indian news channel WION, reporting on issues concerning national security. As a result of his reporting, Mr. Siddiqui faced problems with Pakistan's military establishment and was threatened.
- In early 2018, Mr. Siddiqui was ambushed by armed men, beaten and kidnapped. He was able to escape and report the incident to police but eventually decided to leave Pakistan with his wife and son.
- Mr. Siddiqui was offered a part-time work transfer to France. Other international journalist organisations and NGOs also assisted him with his relocation.
- Mr. Siddiqui has now founded safenewsrooms.org, an organisation that documents media censorship in South Asia. He has also co-founded 'the Dissident Club' in Paris with his wife, a place where dissidents are provided an opportunity and space to express themselves.
- In 2019, Mr. Siddiqui wrote an op-ed in *The Washington Post* which recorded his conversations with U.S. intelligence officials who had told him that they believed, after Jamal Khashoggi's killing, that '*repressive regimes such as the one in Pakistan have been emboldened to silence critics, not only at home but also abroad*'. The officials also told him that they had received intelligence suggesting a plan to assassinate him if he were to return to Pakistan.

Sources: BBC, 'Pakistan reporter Taha Siddiqui flees armed abductors', 10 January 2018, available online at: [www.bbc.com/news/world-asia-42633781](http://www.bbc.com/news/world-asia-42633781); Index on Censorship, 'Project Exile: Pakistani reporter moves to France after kidnap attempt', 25 June 2018, available online at: [www.indexoncensorship.org/2018/06/project-exile-pakistani-reporter-moves-france-after-kidnap-attempt](http://www.indexoncensorship.org/2018/06/project-exile-pakistani-reporter-moves-france-after-kidnap-attempt); Global Investigative Journalism Network, Chintan Girish Modi, 'Meet the Exiled Pakistani Journalist Documenting Censorship in South Asian Newsrooms', 26 June 2018, available online at: <https://gijn.org/2018/06/26/meet-the-exiled-pakistani-journalist-documenting-censorship-in-south-asian-newsrooms>; The Washington Post, Taha Siddiqui, 'I'm a journalist who fled Pakistan, but I no longer feel safe in exile', 8 January 2019, available online at: [www.washingtonpost.com/opinions/2019/01/08/im-journalist-who-fled-pakistan-i-no-longer-feel-safe-exile](http://www.washingtonpost.com/opinions/2019/01/08/im-journalist-who-fled-pakistan-i-no-longer-feel-safe-exile); France 24, 'World Refugee Day: Exiled Pakistani couple founders of 'The Dissident Club' in Paris', 20 June 2020, available online at: [www.france24.com/en/20200620-world-refugee-day-exiled-pakistani-couple-open-the-dissident-club-in-paris](http://www.france24.com/en/20200620-world-refugee-day-exiled-pakistani-couple-open-the-dissident-club-in-paris).

## B. Temporary Humanitarian Pathways: The Short-Term/Humanitarian Visa

### i. The current system

101. A short-term or temporary humanitarian visa may offer recourse to journalists who cannot otherwise travel to another country and seek urgent protection on humanitarian grounds.
102. This category of visa, where available, is most suitable for journalists who wish only to relocate for a short period of time to escape an immediate threat. But it can also offer a means to longer-term resettlement. This form of (short-term) humanitarian visa is, however, only available in a handful of States, including Germany,<sup>139</sup> Norway,<sup>140</sup> Switzerland<sup>141</sup> and the United States.<sup>142</sup>
103. Short-term humanitarian visas may offer the following advantageous features, albeit no one short-term humanitarian visa on offer in any State appears to have *all* of these features:
  - The possibility to apply from one's home State;
  - The ability to make the application on humanitarian grounds (albeit not by reference to the strict legal and evidential thresholds required for International Protection claims);
  - No requirement to establish proof of financial means; and
  - Expeditious, and if necessary, emergency processing of the visa application.
104. Accordingly, for those journalists who require immediate relocation, the Temporary Humanitarian Pathways offered by a short-term visa of this kind may provide a swifter and less costly alternative to other types of visas. Unlike the Non-Humanitarian Pathways, these visas do not require the journalist at risk to first obtain a study or work position abroad prior to submitting a visa application. And while these visas are available on humanitarian grounds, applicants are not generally required to meet the strict legal and/or evidential thresholds required for International Protection.<sup>143</sup>
105. A short-term humanitarian visa would not necessarily preclude the journalist at risk from obtaining in due course longer-term resettlement through International Protection or some other means. Importantly, short-term humanitarian visas do not generally require that the applicant is outside their country of origin to be eligible for relocation, thus contrasting with the general position of applicants seeking International Protection.<sup>144</sup>
106. That is not an academic distinction. In the absence of systems that provide lawful channels for prospective refugees to arrive safely in the country of asylum, many asylum seekers resort to unlawful means that require them to risk their lives.<sup>145</sup> Even then, those who arrive unlawfully risk being detained by the host State, often

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139 See **B. Temporary Humanitarian Pathways: The Short-Term/Humanitarian Visa** at §117.

140 See **B. Temporary Humanitarian Pathways: The Short-Term/Humanitarian Visa** at §119; see also the examples of permanent visas offered by Australia at §130 and Canada at §132, for which applications can be made abroad.

141 See **B. Temporary Humanitarian Pathways: The Short-Term/Humanitarian Visa** at §118.

142 See **B. Temporary Humanitarian Pathways: The Short-Term/Humanitarian Visa** at §108.

143 See **D. International Protection** from §151.

144 See **D. International Protection** at §184. The UK may grant what is known as 'humanitarian protection' for a period of five years (renewable) according to the Immigration Rules, Part 11, 339C, where the applicant does not qualify as a refugee but this must be applied for *from within* the UK: see further, **D. International Protection** from §160.

145 This is the case in Europe where, in the absence of a formalised humanitarian (or short-term emergency) visa system, up to 90 per cent of those who are granted International Protection within the European Union, arrive by unlawful means: see Dr. Violeta Morena-Lax, 'Annex I - The Added Value of EU Legislation on Humanitarian Visas – Legal Aspects' in European Parliament, 'Humanitarian Visas European Added Value Assessment accompanying the European Parliament's legislative own-initiative report (Rapporteur: Juan Fernando Lopez Aguilar)', October 2018, pp. 34-35, available online at: [www.europarl.europa.eu/RegData/etudes/STUD/2018/621823/EPRS\\_STU%282018%29621823\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2018/621823/EPRS_STU%282018%29621823_EN.pdf).

for prolonged periods of time.<sup>146</sup> As the UNHCR statistics indicate, the practice of immigration detention is becoming increasingly commonplace around the world.<sup>147</sup> Those arriving unlawfully may, of course, also be punished in other ways. In Australia, for example, asylum seekers who arrived unlawfully are no longer eligible for permanent refugee status but are instead issued temporary residency permits.<sup>148</sup>

107. It follows that short-term humanitarian visas may not only provide an avenue for journalists at risk to obtain urgent safe refuge, but also, for those in eventual need of longer-term solutions, safe and legal entry to a country which may in due course offer them more permanent recourse.

## 1. *United States – humanitarian parole*

108. The United States permits those outside of the country, who are otherwise ineligible for admission, to request ‘parole’ into the United States based on, *inter alia*, urgent humanitarian grounds or for significant public benefit reasons. Such parole would be for a temporary period of time, generally no more than a year.<sup>149</sup>
109. Under the Immigration and Nationality Act,<sup>150</sup> the Homeland Security Secretary has discretion to issue parole to foreign nationals, with such discretion to be exercised on a case-by-case basis.<sup>151</sup> There is no statutory

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146 Which is defined as ‘the deprivation of liberty or confinement in a closed place which an asylum-seeker is not permitted to leave at will, including, though not limited to, prisons or purpose-built detention, closed reception or holding centres or facilities.’; see UNHCR, ‘Detention Guidelines’, 2012, p. 9, available online at: [www.unhcr.org/afr/publications/legal/505b10ee9/unhcr-detention-guidelines.html](http://www.unhcr.org/afr/publications/legal/505b10ee9/unhcr-detention-guidelines.html). Australia, which, as at 31 August 2020, held 1,545 people in immigration detention facilities, has been condemned for its extended incarceration of refugees and asylum seekers by the UN Working Group on Arbitrary Detention in at least five different cases since June 2017, including one where the asylum seeker in question had been detained since 2009: see The Guardian, Ben Doherty, ‘UN body condemns Australia for illegal detention of asylum seekers and refugees’, 7 July 2018, available online at: [www.theguardian.com/world/2018/jul/08/un-body-condemns-australia-for-illegal-detention-of-asylum-seekers-and-refugees](http://www.theguardian.com/world/2018/jul/08/un-body-condemns-australia-for-illegal-detention-of-asylum-seekers-and-refugees); see also, Australian Government Home Affairs, ‘Immigration Detention and Community Statistics Summary’, 31 August 2020, available online at: [www.homeaffairs.gov.au/research-and-stats/files/immigration-detention-statistics-31-august-2020.pdf](http://www.homeaffairs.gov.au/research-and-stats/files/immigration-detention-statistics-31-august-2020.pdf); Human Rights Council Working Group on Arbitrary Detention, *Opinion Concerning Mohammad Naim Amiri (Australia)*, Opinion No. 42/2017, 22 September 2017, available online at: [www.ohchr.org/Documents/Issues/Detention/Opinions/Session79/A\\_HRC\\_WGAD\\_2017\\_42\\_EN.pdf](http://www.ohchr.org/Documents/Issues/Detention/Opinions/Session79/A_HRC_WGAD_2017_42_EN.pdf).

147 UNHCR, ‘Progress Report 2018 – Beyond Detention’, February 2019, p. 78, available online at: [www.unhcr.org/protection/detention/5c934bbd7/unhcr-global-strategy-beyond-detention-progress-report-2018.html](http://www.unhcr.org/protection/detention/5c934bbd7/unhcr-global-strategy-beyond-detention-progress-report-2018.html). In 2017, the United States detained 225,000, the United Kingdom detained 12,916, Malaysia detained 3,975 and Hungary detained 2,374 individuals.

148 See Australian Government Department of Home Affairs, ‘Temporary Protection Visa’, last accessed October 2020, available online at: <https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/temporary-protection-785>; see also RACS, ‘An Overview of the Current Legal Situation For People Seeking Asylum in Australia’, last accessed October 2020, available online at: [www.racs.org.au/fact-sheets](http://www.racs.org.au/fact-sheets).

149 There are in fact several types of ‘parole’ that may be granted in the United States: (i) ‘Advance Parole’ for aliens inside the United States (for those whose immigration status is under review but are requesting to travel abroad); (ii) parole for aliens outside the United States who are requesting parole for urgent humanitarian reasons, or where a U.S. Government Agency or Department requests parole on their behalf in compelling circumstances or for reasons such as urgent humanitarian or significant public benefits grounds; or (iii) where a person requests ‘parole authorization’ which is for aliens outside the United States who have previously been removed from the country but have successfully appealed their removal decision: see U.S. Department of State, ‘Foreign Affairs Manual, and Handbook’, last accessed October 2020, 9 FAM 202.3-2, available online at: <https://fam.state.gov/fam/09FAM/09FAM020203.html>. For completeness, parole can also refer to requests for ‘parole in place’ or parole for those who are under the jurisdiction of Immigration and Customs Enforcement (ICE) or parole for individuals who apply under special parole programmes: see further USCIS, ‘Humanitarian or Significant Public Benefit Parole for Individuals Outside the United States’, last accessed October 2020, available online at: [www.uscis.gov/humanitarian/humanitarian-or-significant-public-benefit-parole-for-individuals-outside-the-united-states](http://www.uscis.gov/humanitarian/humanitarian-or-significant-public-benefit-parole-for-individuals-outside-the-united-states). This section of the Report only refers to the parole available to aliens outside the United States who make a request themselves for ‘humanitarian parole’ – i.e. category (ii).

150 The Immigration and Nationality Act, section 212(d)(5) (8 U.S.C. § 1182) (in conjunction with transfer of authority under the Homeland Security Act 2002) allows the Secretary of Homeland Security, subject to some exclusions, to use their discretion to parole an alien applying for admission into the United States temporarily for urgent humanitarian reasons or significant public benefit.

151 The Homeland Security Secretary has delegated his parole authority to three agencies - USCIS, ICE and CBP: ‘Memorandum of Agreement between UCSIS, ICE and CBP’, 2008, available online at: [www.ice.gov/doclib/foia/reports/parole-authority-moa-9-08.pdf](http://www.ice.gov/doclib/foia/reports/parole-authority-moa-9-08.pdf). There are different processes involved for individuals who are already in the United States and seek parole in place, ‘advance parole’ to leave and return, parole where they are under the jurisdiction of Immigration and Customs Enforcement, or under special parole programs: see USCIS, ‘Humanitarian or Significant Public Benefit Parole for Individuals Outside the United States’, last accessed October 2020, available online at: [www.uscis.gov/humanitarian/humanitarian-or-significant-public-benefit-parole-for-individuals-outside-the-united-states](http://www.uscis.gov/humanitarian/humanitarian-or-significant-public-benefit-parole-for-individuals-outside-the-united-states).

definition of 'urgent humanitarian reasons' or 'significant public benefit'.<sup>152</sup> Applicants for this short-term work pathway must provide evidence that they are financially self-sufficient or that a suitable individual/organisation will provide them with financial support while they are in the United States.<sup>153</sup>

110. USCIS stresses that '*[p]arole is not intended to be used solely to avoid normal visa processing procedures and timelines, to bypass inadmissibility waiver processing, or to replace established refugee processing channels.*'<sup>154</sup> It is '*generally not intended to be used to avoid normal refugee processing or to provide protection to individuals at generalized risk of harm around the world*' but might be requested in instances of '*targeted or individualized harm*'.<sup>155</sup> An individual who is paroled is not considered to have been formally admitted into the United States for the purposes of US immigration law.
111. There does not appear to be publicly available data on the number of grants of humanitarian parole made by USCIS in recent years.<sup>156</sup> According to a 2011 USCIS source, USCIS has typically received approximately 1,200 applications for humanitarian parole each year and has granted approximately 25 per cent of these applications.<sup>157</sup>

## 2. Europe – selected practices

112. Currently, the European Union does not have a uniform temporary humanitarian pathway and efforts to establish an EU humanitarian visa have foundered.<sup>158</sup>
113. The Schengen Borders Code (SBC) only includes generic references to the rights of refugees and the international obligations of Member States to guarantee those rights.<sup>159</sup> Under Article 6 of the SBC, third-country nationals must show an ability to return to their home countries to be legally allowed entry into the EU. However, and rather paradoxically, an asylum seeker's ability to return home may exclude them from International Protection.<sup>160</sup>

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152 Each case is considered individually. In assessing 'urgent humanitarian reasons', USCIS officers will, among other things, take into account '*whether or not the circumstances are pressing; the effect of the circumstances on the individual's welfare and wellbeing; and the degree of suffering that may result if parole is not authorized*'. In assessing 'significant public benefit', USCIS officers will look at, among other things, law enforcement and national security reasons or foreign or domestic policy considerations; see USCIS, 'Humanitarian or Significant Public Benefit Parole for Individuals Outside the United States', last accessed October 2020, available online at: [www.uscis.gov/humanitarian/humanitarian-or-significant-public-benefit-parole-for-individuals-outside-the-united-states](http://www.uscis.gov/humanitarian/humanitarian-or-significant-public-benefit-parole-for-individuals-outside-the-united-states). The Memorandum of Agreement between UCSIS, ICE and CBP states: '*As practice has evolved, DHS bureaus have generally construed 'humanitarian' paroles (HPs) as relating to urgent medical, family, and related needs and 'significant public benefit['] paroles (SPBPs) as limited to persons of law enforcement interest such as witnesses to judicial proceedings.*': see 'Memorandum of Agreement between UCSIS, ICE and CBP', 2008, available online at: [www.ice.gov/doclib/foia/reports/parole-authority-moa-9-08.pdf](http://www.ice.gov/doclib/foia/reports/parole-authority-moa-9-08.pdf).

153 See USCIS, 'Humanitarian or Significant Public Benefit Parole for Individuals Outside the United States', last accessed October 2020, available online at: [www.uscis.gov/humanitarian/humanitarian-or-significant-public-benefit-parole-individuals-outside-united-states](http://www.uscis.gov/humanitarian/humanitarian-or-significant-public-benefit-parole-individuals-outside-united-states).

154 See USCIS, 'Humanitarian or Significant Public Benefit Parole for Individuals Outside the United States', last accessed October 2020, available online at: [www.uscis.gov/humanitarian/humanitarian-or-significant-public-benefit-parole-individuals-outside-united-states](http://www.uscis.gov/humanitarian/humanitarian-or-significant-public-benefit-parole-individuals-outside-united-states).

155 USCIS, 'Guidance on Evidence for Certain Types of Humanitarian or Significant Public Benefit Parole Requests', last accessed October 2020, available online at: [www.uscis.gov/humanitarian/humanitarian-parole/guidance-on-evidence-for-certain-types-of-humanitarian-or-significant-public-benefit-parole-requests](http://www.uscis.gov/humanitarian/humanitarian-parole/guidance-on-evidence-for-certain-types-of-humanitarian-or-significant-public-benefit-parole-requests).

156 See Congressional Research Service, 'Immigration Parole', 15 October 2020, p. 5, available online at: <https://crsreports.congress.gov/product/pdf/R/R46570>.

157 USCIS, 'Refugee, Asylum and International Operations Directorate, Humanitarian Parole Program', February 2011, available online at: [www.uscis.gov/sites/default/files/document/presentations/Humanitarian%20Parole%20Program.pdf](http://www.uscis.gov/sites/default/files/document/presentations/Humanitarian%20Parole%20Program.pdf); see also Los Angeles Times, 'At U.S. border, an emergency pass that's not easy to get', 20 February 2013, available online at: [www.latimes.com/world/la-xpm-2013-feb-20-la-na-humanitarian-parole-20130221-story.html](http://www.latimes.com/world/la-xpm-2013-feb-20-la-na-humanitarian-parole-20130221-story.html), where it is reported that USCIS received 1,210 applications in 2012 for humanitarian parole and granted 353.

158 See **B. Temporary Humanitarian Pathways: The Short-Term/Humanitarian Visa** from §122.

159 See Articles 3 and 4. See also European Parliament Research Service, 'Humanitarian Visas – European Added Value Assessment accompanying the European Parliament's legislative own-initiative report', October 2018, p. 9, available online at: [www.europarl.europa.eu/RegData/etudes/STUD/2018/621823/EPRS\\_STU%282018%29621823\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2018/621823/EPRS_STU%282018%29621823_EN.pdf).

160 European Parliament Research Service, 'Humanitarian Visas – European Added Value Assessment accompanying the European Parliament's legislative own-initiative report', October 2018, available online at: [www.europarl.europa.eu/RegData/etudes/STUD/2018/621823/EPRS\\_STU%282018%29621823\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2018/621823/EPRS_STU%282018%29621823_EN.pdf); see also discussion in International Bar Association, 'A Model Instrument for an Emergency Evacuation Visa', 2019, p. 64, available online at: [www.ibanet.org/Document/Default.aspx?DocumentUid=bd13bef4-6a29-414f-8d65-e2ddb7c695df](http://www.ibanet.org/Document/Default.aspx?DocumentUid=bd13bef4-6a29-414f-8d65-e2ddb7c695df).

114. Article 25 of the EU Visa Code<sup>161</sup> states in relevant part that a visa with limited territorial validity (LTV), i.e. only valid within that Member State, shall be issued exceptionally when a Member State considers it necessary on humanitarian grounds, for reasons of national interest or because of international obligations. However, neither the application procedure nor the processes for issuing and appeal of decisions for these types of visas are standardised across Member States and can even be ambiguous.<sup>162</sup>
115. In the case of *X and X v. Etat Belge*, the Court of Justice of the European Union held in its preliminary ruling that the question of whether Member States are required to grant an LTV submitted on humanitarian grounds to persons wishing to enter their territory with the intention of applying for asylum thereafter, is a matter of national law, rather than one that fell within the scope of the EU Visa Code.<sup>163</sup>
116. In the recent judgment of the Grand Chamber of the ECtHR in *M.N. and others v. Belgium*, the question of whether Article 3 (prohibition against torture) of the Convention requires State parties to provide short-term humanitarian visas in their foreign consulates and embassies was held to be inadmissible, as the applicants who had applied for LTVs on humanitarian grounds in the Belgian Embassy in Beirut, were not within Belgium's jurisdiction for the purposes of Article 1 of the Convention.<sup>164</sup>
117. In **Germany**, a foreign national '*may be granted a temporary residence permit for the purpose of admission from abroad in accordance with international law or on urgent humanitarian grounds*' pursuant to Section 22 of the Residence Act.<sup>165</sup> This permit is not a general alternative to other visa applications and is an exceptional pathway.<sup>166</sup> An interview will be conducted by the German consulate during which time the consulate will evaluate the humanitarian grounds claimed.<sup>167</sup> Relevant considerations may include a serious and inescapable threat to life or body, or a close relationship to Germany or contacts to possible sponsoring people/organisations in Germany.<sup>168</sup> It is understood that an applicant for the temporary residence permit may subsequently make a claim for International Protection.<sup>169</sup> In 2019, 96 individuals were accepted into Germany pursuant to section 22 of the Residence Act, though statistics are not available regarding how many of these were on humanitarian grounds.<sup>170</sup> That number was 279 in 2018 and 507 in 2017.

161 See Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code). Note that Iceland, Liechtenstein, Norway and Switzerland are also covered by the code.

162 European Parliament Research Service, 'Humanitarian Visas – European Added Value Assessment accompanying the European Parliament's legislative own-initiative report', October 2018, p. 92, available online at: [www.europarl.europa.eu/RegData/etudes/STUD/2018/621823/EPRS\\_STU%282018%29621823\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2018/621823/EPRS_STU%282018%29621823_EN.pdf).

163 CJEU, *X and X v. Etat Belge*, Case No. C-638/16 PPU, 7 March 2017, para. 44, available online at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62016CJ0638>.

164 ECtHR (GC), *M.N. and others v. Belgium*, App. No. 3599/18, 5 May 2020, available online at: <https://hudoc.echr.coe.int/eng#%7B%22itemid%3A%3A3599%2F18%22%7D>.

165 See 'Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory', last accessed October 2020, available online at [www.gesetze-im-internet.de/englisch\\_aufenthg/englisch\\_aufenthg.html](http://www.gesetze-im-internet.de/englisch_aufenthg/englisch_aufenthg.html).

166 Auswärtiges Amt, 'Visumhandbuch', August 2020, available online at: [www.auswaertiges-amt.de/blob/207816/e025d7a51aa0e20f5567c6f7478c8fd6/visumhandbuch-data.pdf](http://www.auswaertiges-amt.de/blob/207816/e025d7a51aa0e20f5567c6f7478c8fd6/visumhandbuch-data.pdf). See 'Asyl/Schutzersuchen aus dem Ausland (humanitäre, völkerrechtliche und politische Aufnahme, § 22 AufenthG)', Sub-section 3 and 3.1. See also Deutscher Bundestag Wissenschaftliche Dienste, 'Gewährung einer Aufenthaltserlaubnis aus humanitären Gründen', WD 3 - 3000 - 344/18, 27 September 2018, p. 3, available online at: [www.bundestag.de/resource/blob/578936/8f9be2d4994cfa260ce3f2d8955daf7b/WD-3-344-18-pdf-data.pdf](http://www.bundestag.de/resource/blob/578936/8f9be2d4994cfa260ce3f2d8955daf7b/WD-3-344-18-pdf-data.pdf).

167 Auswärtiges Amt, 'Visumhandbuch', August 2020, available online at: [www.auswaertiges-amt.de/blob/207816/e025d7a51aa0e20f5567c6f7478c8fd6/visumhandbuch-data.pdf](http://www.auswaertiges-amt.de/blob/207816/e025d7a51aa0e20f5567c6f7478c8fd6/visumhandbuch-data.pdf). See 'Asyl/Schutzersuchen aus dem Ausland (humanitäre, völkerrechtliche und politische Aufnahme, § 22 AufenthG)', Sub-section 3.2.

168 Auswärtiges Amt, 'Visumhandbuch', August 2020, available online at: [www.auswaertiges-amt.de/blob/207816/e025d7a51aa0e20f5567c6f7478c8fd6/visumhandbuch-data.pdf](http://www.auswaertiges-amt.de/blob/207816/e025d7a51aa0e20f5567c6f7478c8fd6/visumhandbuch-data.pdf). See 'Asyl/Schutzersuchen aus dem Ausland (humanitäre, völkerrechtliche und politische Aufnahme, § 22 AufenthG)', Sub-section 3.2.1.

169 Auswärtiges Amt, 'Visumhandbuch', August 2020, available online at: [www.auswaertiges-amt.de/blob/207816/e025d7a51aa0e20f5567c6f7478c8fd6/visumhandbuch-data.pdf](http://www.auswaertiges-amt.de/blob/207816/e025d7a51aa0e20f5567c6f7478c8fd6/visumhandbuch-data.pdf). See 'Asyl/Schutzersuchen aus dem Ausland (humanitäre, völkerrechtliche und politische Aufnahme, § 22 AufenthG)', Sub-section 3.3.

170 Statistics provided by e-mail from Bundesamt für Migration und Flüchtlinge dated 5 November 2020.

118. In **Switzerland**, a short-term visa on humanitarian grounds may be granted if the applicant is considered to be in imminent and serious danger of bodily harm, provided that the applicant is not in a third country.<sup>171</sup> Since the Asylum Act does not permit applications from abroad, those who want to apply for asylum can apply for a humanitarian visa at a Swiss diplomatic representation in their home country.<sup>172</sup> In 2019, Switzerland granted 172 such visas, while 222 were granted in 2018.<sup>173</sup>
119. In **Norway**, pursuant to Section 11 of the Immigration Act, a short-term visa may be granted for a period up to three months, even if the applicant does not meet the Schengen requirements.<sup>174</sup> The visa can be granted for '*humanitarian reasons, national considerations, or international obligations*' but is only valid for entry into and stay in Norway during the specified period of time.<sup>175</sup> In 2019, Norway issued 228 visas pursuant to Section 11 of the Immigration Act but statistics are unavailable regarding how many of these were for humanitarian reasons. In 2018 that number was 133 and in 2017 that number was 218.<sup>176</sup>
120. In the absence of a uniform temporary humanitarian or short-term emergency visa within the EU system, EU Member States have developed their own policies and procedures. Very few presently offer the sort of short-term humanitarian pathway that would provide effective recourse for journalists at risk.
121. A 2014 study prepared for the European Parliament Committee on Civil Liberties, Justice and Home Affairs (LIBE Committee) noted that sixteen EU Member States offered at that time, or had previously offered, some form of humanitarian visa.<sup>177</sup> For example, in Austria, prospective refugees were previously able to apply for a Type C short-stay visa, or a Type D long-term Schengen visa, on humanitarian grounds at diplomatic or consular representations abroad to travel to Austria and to then apply for asylum once there. However, in 2003 this procedure was formally limited to family reunification cases.<sup>178</sup> In Spain, ambassadors have powers to authorise transferring an asylum applicant to Spain provided that the application has been filed in a Spanish embassy or consulate in a third country.<sup>179</sup> However, this option is only open to those who are not nationals of the country they are currently in.<sup>180</sup> Such applications are considered to be applications for exceptional entry permits.<sup>181</sup>

### 3. *The proposal for a short-term EU humanitarian visa*

122. There have been unsuccessful attempts to negotiate and bring into existence a short-term European Union humanitarian visa.

171 Swiss State Secretariat for Migration SEM, 'Asylum applications from abroad', 1 March 2019, available online at: [www.sem.admin.ch/sem/en/home/asyl/asylverfahren/asylgesuch/asylgesuch\\_aus\\_ausland.html](http://www.sem.admin.ch/sem/en/home/asyl/asylverfahren/asylgesuch/asylgesuch_aus_ausland.html).

172 Swiss State Secretariat for Migration SEM, 'Asylum applications from abroad', 1 March 2019, available online at: [www.sem.admin.ch/sem/en/home/asyl/asylverfahren/asylgesuch/asylgesuch\\_aus\\_ausland.html](http://www.sem.admin.ch/sem/en/home/asyl/asylverfahren/asylgesuch/asylgesuch_aus_ausland.html).

173 Schweizerisches Rotes Kreuz, 'Beratungsdienst Humanitäre Visa SRK 2019 in Zahlen', 2019, available online at: [www.redcross.ch/de/file/31533/download](http://www.redcross.ch/de/file/31533/download).

174 See 'The Immigration Act Section 11', last accessed October 2020, available online at: [www.regjeringen.no/en/dokumenter/immigration-act/id585772/](http://www.regjeringen.no/en/dokumenter/immigration-act/id585772/).

175 See 'The Immigration Act Section 11', last accessed October 2020, available online at: [www.regjeringen.no/en/dokumenter/immigration-act/id585772/](http://www.regjeringen.no/en/dokumenter/immigration-act/id585772/).

176 E-mails from Statistiske forespørslers, Norway dated 26 October 2020 and 2 November 2020.

177 European Parliament, 'Humanitarian visas: option or obligation Study for the LIBE Committee', September 2014, p. 47, available online at: [www.epgencms.europarl.europa.eu/cmsdata/upload/eb469bdf-0e31-40bb-8c75-8db410ab13fc/Session\\_2\\_-\\_Study\\_Humanitarian\\_visas.pdf](http://www.epgencms.europarl.europa.eu/cmsdata/upload/eb469bdf-0e31-40bb-8c75-8db410ab13fc/Session_2_-_Study_Humanitarian_visas.pdf).

178 European Parliament, 'Humanitarian visas: option or obligation Study for the LIBE Committee', September 2014, p. 45, available online at: [www.epgencms.europarl.europa.eu/cmsdata/upload/eb469bdf-0e31-40bb-8c75-8db410ab13fc/Session\\_2\\_-\\_Study\\_Humanitarian\\_visas.pdf](http://www.epgencms.europarl.europa.eu/cmsdata/upload/eb469bdf-0e31-40bb-8c75-8db410ab13fc/Session_2_-_Study_Humanitarian_visas.pdf).

179 Barcelona, 'Ciutat Refugi, International Protection and asylum seeking in Spain', last accessed October 2020, available online at: <http://ciutatrefugi.barcelona/en/international-protection-and-asylum-seeking-spain>.

180 Barcelona, 'Ciutat Refugi, International Protection and asylum seeking in Spain', last accessed October 2020, available online at: <http://ciutatrefugi.barcelona/en/international-protection-and-asylum-seeking-spain>.

181 European Parliament, 'Humanitarian visas: option or obligation Study for the LIBE Committee', September 2014, p. 47, available online at: [www.epgencms.europarl.europa.eu/cmsdata/upload/eb469bdf-0e31-40bb-8c75-8db410ab13fc/Session\\_2\\_-\\_Study\\_Humanitarian\\_visas.pdf](http://www.epgencms.europarl.europa.eu/cmsdata/upload/eb469bdf-0e31-40bb-8c75-8db410ab13fc/Session_2_-_Study_Humanitarian_visas.pdf).

123. In April 2016, the European Parliament resolution '*on the situation in the Mediterranean and the need for a holistic EU approach to migration*' called for Member States to use existing pathways to provide humanitarian visas to those persons who needed to access a third country in order to apply for asylum and noted the need to amend the Visa Code to include more specific provisions on humanitarian visas.<sup>182</sup> Following this resolution, the European Parliament's LIBE Committee report of 25 April 2016 amended a 2014 European Commission proposal for a recast of the Visa Code to include the possibility of persons seeking International Protection applying for a 'European humanitarian visa' at the consulate or embassy of a Member State. However, due to a deadlock in negotiations between the European Commission, the European Parliament and the Council,<sup>183</sup> in September 2017, the European Parliament withdrew its proposed amendments.<sup>184</sup>
124. In November 2017, the LIBE Committee decided to prepare a European Parliament report on humanitarian visas.<sup>185</sup> Under the procedure foreseen by the LIBE Committee, the proposed visas would have limited territorial validity but would allow asylum seekers to reach the territory of the Member State in which they would be lodging an application for International Protection.
125. The final report was adopted by the LIBE Committee in October 2018<sup>186</sup> and the European Parliament also published a European Added Value Assessment to accompany the report where three potential options were considered: (i) a visa waiver approach; (ii) limited territorial visas; and (iii) EU-wide International Protection application travel permits.<sup>187</sup> After tabling and debating the Report and its recommendations, the European Parliament voted on the Report (and the Motion for a European Parliament Resolution contained in it) on 14 November 2018 but ultimately rejected it.<sup>188</sup>
126. At the end of November 2018, a second legislative report was tabled under Rapporteur Lopez Aguilar which was adopted by the European Parliament on 11 December 2018.<sup>189</sup> The Commission was asked to submit a proposal establishing humanitarian visas by the end of March 2019.<sup>190</sup> This second legislative initiative

182 European Parliament, 'European Parliament resolution of 12 April 2016 on the situation in the Mediterranean and the need for a holistic EU approach to migration (2015/2095(INI))', 12 April 2016, available online at: [www.europarl.europa.eu/doceo/document/TA-8-2016-0102\\_EN.html](http://www.europarl.europa.eu/doceo/document/TA-8-2016-0102_EN.html).

183 Both the European Commission and the Council were opposed to the adoption of humanitarian visa provisions in the Visa Code and the Council refused to move forward with negotiations if those amendments were not withdrawn. A series of hearings and deliberations that took place after the proposal was presented, also showed a divergence between the views of the European Parliament and the Council: see Batory Foundation, 'EU Visa Code reform', May 2016, p. 4, available online at: [www.batory.org.pl/upload/files/Programy%20operacyjnej/Otwarta%20Europa/EU%20Visa%20Code%20reform.pdf](http://www.batory.org.pl/upload/files/Programy%20operacyjnej/Otwarta%20Europa/EU%20Visa%20Code%20reform.pdf); European Parliament, 'Humanitarian Visas – Amendment of the EU Visa Code', 20 October 2019, available online at: [www.europarl.europa.eu/legislative-train/theme-towards-a-new-policy-on-migration/file-humanitarian-visas-%E2%80%93-amendment-of-the-eu-visa-code](http://www.europarl.europa.eu/legislative-train/theme-towards-a-new-policy-on-migration/file-humanitarian-visas-%E2%80%93-amendment-of-the-eu-visa-code).

184 European Parliament, 'Humanitarian Visas – Amendment of the EU Visa Code', 20 October 2019, available online at: [www.europarl.europa.eu/legislative-train/theme-towards-a-new-policy-on-migration/file-humanitarian-visas-%E2%80%93-amendment-of-the-eu-visa-code](http://www.europarl.europa.eu/legislative-train/theme-towards-a-new-policy-on-migration/file-humanitarian-visas-%E2%80%93-amendment-of-the-eu-visa-code).

185 European Parliament, 'Proposal for a regulation on establishing a European Humanitarian Visa', November 2019, available online at: [www.europarl.europa.eu/legislative-train/api/stages/report/current/theme/towards-a-new-policy-on-migration/file/proposal-for-a-regulation-on-establishing-a-european-humanitarian-visa](http://www.europarl.europa.eu/legislative-train/api/stages/report/current/theme/towards-a-new-policy-on-migration/file/proposal-for-a-regulation-on-establishing-a-european-humanitarian-visa); see also European Parliament, 'Draft Report with recommendations to the Commission on Humanitarian Visas (2017/2270 (INL))', 22 June 2018, available online at: [www.europarl.europa.eu/doceo/document/LIBE-PR-623853\\_EN.pdf](http://www.europarl.europa.eu/doceo/document/LIBE-PR-623853_EN.pdf).

186 European Parliament, 'Report with recommendations to the Commission on Humanitarian Visas (2017/2270 (INL))', 16 October 2018, available online at: [www.europarl.europa.eu/doceo/document/A-8-2018-0328\\_EN.pdf](http://www.europarl.europa.eu/doceo/document/A-8-2018-0328_EN.pdf).

187 European Parliament Research Service, 'Humanitarian Visas – European Added Value Assessment accompanying the European Parliament's legislative own-initiative report', October 2018, available online at: [www.europarl.europa.eu/RegData/etudes/STUD/2018/621823/EPRS\\_STU%282018%29621823\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2018/621823/EPRS_STU%282018%29621823_EN.pdf).

188 European Parliament, 'Motion for a European Parliament Resolution with recommendations to the Commission on Humanitarian Visas (2017/2270(INL))', 2018, available online at: [www.europarl.europa.eu/doceo/document/A-8-2018-0328\\_EN.html](http://www.europarl.europa.eu/doceo/document/A-8-2018-0328_EN.html); European Parliament Legislative Observatory, 'Results of vote in Parliament Statistics - 2017/2270(INL)|A8-0328/2018', 14 November 2018, available online at: <https://oeil.secure.europarl.europa.eu/oeil/popups/sda.do?id=31660&l=en>; European Parliament, 'Proposal for a regulation on establishing a European Humanitarian Visa', November 2019, available online at: [www.europarl.europa.eu/legislative-train/api/stages/report/current/theme/towards-a-new-policy-on-migration/file/proposal-for-a-regulation-on-establishing-a-european-humanitarian-visa](http://www.europarl.europa.eu/legislative-train/api/stages/report/current/theme/towards-a-new-policy-on-migration/file/proposal-for-a-regulation-on-establishing-a-european-humanitarian-visa).

189 European Parliament, 'Report with recommendations to the Commission on Humanitarian Visas (2018/2271(INL))', 4 December 2018, available online at: [www.europarl.europa.eu/doceo/document/A-8-2018-0423\\_EN.pdf](http://www.europarl.europa.eu/doceo/document/A-8-2018-0423_EN.pdf); European Parliament, 'European Parliament resolution of 11 December 2018 with recommendations to the Commission on Humanitarian Visas (2018/2271(INL))', 11 December 2018, available online at: [www.europarl.europa.eu/doceo/document/TA-8-2018-0494\\_EN.html](http://www.europarl.europa.eu/doceo/document/TA-8-2018-0494_EN.html).

190 European Parliament, 'European Parliament resolution of 11 December 2018 with recommendations to the Commission on Humanitarian Visas (2018/2271(INL))', 11 December 2018, available online at: [www.europarl.europa.eu/doceo/document/TA-8-2018-0494\\_EN.html](http://www.europarl.europa.eu/doceo/document/TA-8-2018-0494_EN.html).



included the proposal of making humanitarian visa applications at the relevant Member State's consulates/embassies, an interview process, an independent assessment of the authenticity of the documents provided, a security screening and a time limit to reach a decision of within 15 days of lodging the application.<sup>191</sup>

127. While the European Commission welcomed the Parliament's interest, it concluded that its own Union Resettlement Framework proposal of June 2016 on reforming the European asylum system to enable the first standardised legal framework for resettlement at European level, was a sufficient means to address the Parliament's objectives and stated that creating a subjective right to admission would be '*politically not feasible*'.<sup>192</sup> The Commission also stated that it would consider whether additional measures for admitting persons to Member States were needed, while evaluating the application of the regulation establishing a Union Resettlement Framework.<sup>193</sup>
128. On 23 September 2020, a new pact on migration and asylum was announced by the European Commission. This included a recommendation '*on legal pathways to protection in the EU: promoting resettlement, humanitarian admission and other complementary pathways*' which, in line with the UNHCR three year strategy (2019-2021) on resettlement and complementary pathways, stated that '*it is appropriate to promote the putting in place or making further use of humanitarian admission models and other complementary pathways as an additional means of admission to expand the number of places offered through safe and legal pathways, in addition to resettlement*'.<sup>194</sup> However, despite encouraging Member States to expand humanitarian admission, the Commission Recommendation contained no reference to plans for the adoption of an EU humanitarian visa.

#### 4. **Permanent humanitarian visas: the examples of Australia and Canada**

129. Australia and Canada offer permanent humanitarian visas which, although more akin to International Protection visas,<sup>195</sup> can be applied for from *within* an applicant's home State. This is rare.<sup>196</sup> For this reason, these two visas are considered in this section as further examples of humanitarian pathways for journalists at risk that can be pursued without having to leave their home State.
130. Australia permits persons who are still in their home State to apply for an 'In-country Special Humanitarian (subclass 201)' visa if they are subject to persecution and have been unable to leave that country to seek refuge. This is a permanent visa:

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191 See European Parliament, 'Report with recommendations to the Commission on Humanitarian Visas (2018/2271(INL))', 4 December 2018, available online at: [www.europarl.europa.eu/doceo/document/A-8-2018-0423\\_EN.pdf](http://www.europarl.europa.eu/doceo/document/A-8-2018-0423_EN.pdf).

192 European Parliament, 'Proposal for a regulation on establishing a European Humanitarian Visa', November 2019, available online at: [www.europarl.europa.eu/legislative-train/api/stages/report/current/theme/towards-a-new-policy-on-migration/file/proposal-for-a-regulation-on-establishing-a-european-humanitarian-visa](http://www.europarl.europa.eu/legislative-train/api/stages/report/current/theme/towards-a-new-policy-on-migration/file/proposal-for-a-regulation-on-establishing-a-european-humanitarian-visa). A '*partial provisional political agreement*' regarding the Union Resettlement Framework had been reached in June 2018, which included addition of humanitarian admission to its scope: see European Commission, 'Commission Recommendation of 23.9.2020 on legal pathways to protection in the EU: promoting resettlement, humanitarian admission and other complementary pathways', 23 September 2020, p. 3, available online at: [https://ec.europa.eu/info/sites/info/files/commission\\_recommendation\\_on\\_legal\\_pathways\\_to\\_protection\\_in\\_the\\_eu\\_promoting\\_resettlement\\_humanitarian\\_admission\\_and\\_other\\_complementary\\_pathways.pdf](https://ec.europa.eu/info/sites/info/files/commission_recommendation_on_legal_pathways_to_protection_in_the_eu_promoting_resettlement_humanitarian_admission_and_other_complementary_pathways.pdf).

193 European Parliament, 'Proposal for a regulation on establishing a European Humanitarian Visa', November 2019, available online at: [www.europarl.europa.eu/legislative-train/api/stages/report/current/theme/towards-a-new-policy-on-migration/file/proposal-for-a-regulation-on-establishing-a-european-humanitarian-visa](http://www.europarl.europa.eu/legislative-train/api/stages/report/current/theme/towards-a-new-policy-on-migration/file/proposal-for-a-regulation-on-establishing-a-european-humanitarian-visa); see also discussion generally in International Bar Association, 'A Model Instrument for an Emergency Evacuation Visa', 2019, available online at: [www.ibanet.org/Document/Default.aspx?DocumentUid=bd13bef4-6a29-414f-8d65-e2ddb7c695df](http://www.ibanet.org/Document/Default.aspx?DocumentUid=bd13bef4-6a29-414f-8d65-e2ddb7c695df).

194 European Commission, 'Commission Recommendation of 23.9.2020 on legal pathways to protection in the EU: promoting resettlement, humanitarian admission and other complementary pathways', 23 September 2020, available online at: [https://ec.europa.eu/info/sites/info/files/commission\\_recommendation\\_on\\_legal\\_pathways\\_to\\_protection\\_in\\_the\\_eu\\_promoting\\_resettlement\\_humanitarian\\_admission\\_and\\_other\\_complementary\\_pathways.pdf](https://ec.europa.eu/info/sites/info/files/commission_recommendation_on_legal_pathways_to_protection_in_the_eu_promoting_resettlement_humanitarian_admission_and_other_complementary_pathways.pdf).

195 See generally **D. International Protection** from §151.

196 See **The key impediments within the current system: International Protection** from §194.

- In the 2019-2020 reporting period, 7,627 applications were lodged for this category of visa and 1,195 persons were granted this visa, an increase on 2015-2016 and 2016-2017, in which only a couple of hundred people were granted such visas.
  - However, the average processing times for the grant of the 'Refugee' category of visas that encompasses this subset of visa was approximately 52 weeks.<sup>197</sup>
131. Australia also has an Emergency Rescue (subclass 203) visa for those individuals subject to persecution in their home country with urgent and compelling reasons to be resettled in Australia. Requests for such urgent assistance generally have to be made through the UNHCR for this visa category.<sup>198</sup> Only 21 applications for this visa were lodged during the 2019-2020 reporting period, with 20 such visas granted.<sup>199</sup>
132. Canada permits those individuals who are not otherwise eligible for permanent residence in Canada to apply for permanent residence on humanitarian and compassionate grounds.<sup>200</sup> These are considered exceptional cases and applications are determined on a case-by-case basis.<sup>201</sup> This application can only be submitted if the person is '*applying for permanent resident status in Canada, or for a permanent resident visa abroad*'.<sup>202</sup> Importantly, however, risk factors such as persecution, risk to life, cruel and unusual treatment or punishment, will not be assessed in granting this visa.<sup>203</sup> As at October 2020, processing times for this visa are approximately 22 to 36 months.<sup>204</sup>
133. Although the Australian and Canadian permanent humanitarian visas permit applications from within home States, the extensive processing times for these sorts of visa currently make them an unfeasible option for the great majority of journalists at risk.

## ii. *The key impediments within the current system: Temporary Humanitarian Pathways*

- Very few States operate the sort of short-term humanitarian visa that would benefit journalists at risk;
- The numbers of short-term humanitarian visas granted are generally very low; and
- States may require applicants for this sort of visa to provide evidence of full financial sponsorship or sufficient financial means.

<sup>197</sup> Australian Government Department of Home Affairs, 'Australia's offshore Humanitarian Program: 2019–20', 2020, available online at: [www.homeaffairs.gov.au/research-and-stats/files/australia-offshore-humanitarian-program-2019-20.pdf](http://www.homeaffairs.gov.au/research-and-stats/files/australia-offshore-humanitarian-program-2019-20.pdf). Note that the increased number of 201 visas in the 2019-20 reporting period reflects the increased grants to Yazidis in Iraq.

<sup>198</sup> Australian Government Department of Home Affairs, 'Application for an Offshore Humanitarian Visa Form 842', last accessed October 2020, available online at: <https://immi.homeaffairs.gov.au/form-listing/forms/842.pdf>.

<sup>199</sup> Australian Government Department of Home Affairs, 'Australia's offshore Humanitarian Program: 2019–20', 2020, available online at: [www.homeaffairs.gov.au/research-and-stats/files/australia-offshore-humanitarian-program-2019-20.pdf](http://www.homeaffairs.gov.au/research-and-stats/files/australia-offshore-humanitarian-program-2019-20.pdf).

<sup>200</sup> See Immigration and Refugee Protection Act, Section 25 and Immigration and Refugee Protection Regulations (SOR/2002-227), Part 5, Division 5 Humanitarian and Compassionate Considerations.

<sup>201</sup> Government of Canada, 'Humanitarian and compassionate grounds', 13 September 2017, available online at: [www.canada.ca/en/immigration-refugees-citizenship/services/refugees/claim-protection-inside-canada/after-apply-next-steps/refusal-options/humanitarian-compassionate-grounds.html](http://www.canada.ca/en/immigration-refugees-citizenship/services/refugees/claim-protection-inside-canada/after-apply-next-steps/refusal-options/humanitarian-compassionate-grounds.html).

<sup>202</sup> Government of Canada, 'Humanitarian and compassionate grounds', 13 September 2017, available online at: [www.canada.ca/en/immigration-refugees-citizenship/services/refugees/claim-protection-inside-canada/after-apply-next-steps/refusal-options/humanitarian-compassionate-grounds.html](http://www.canada.ca/en/immigration-refugees-citizenship/services/refugees/claim-protection-inside-canada/after-apply-next-steps/refusal-options/humanitarian-compassionate-grounds.html).

<sup>203</sup> Government of Canada, 'Humanitarian and compassionate grounds', 13 September 2017, available online at: [www.canada.ca/en/immigration-refugees-citizenship/services/refugees/claim-protection-inside-canada/after-apply-next-steps/refusal-options/humanitarian-compassionate-grounds.html](http://www.canada.ca/en/immigration-refugees-citizenship/services/refugees/claim-protection-inside-canada/after-apply-next-steps/refusal-options/humanitarian-compassionate-grounds.html).

<sup>204</sup> Government of Canada, 'Check processing times', last accessed October 2020, available online at: [www.canada.ca/en/immigration-refugees-citizenship/services/application/check-processing-times.html](http://www.canada.ca/en/immigration-refugees-citizenship/services/application/check-processing-times.html).

134. Short-term humanitarian visas can, in principle, provide journalists at risk with a route to safe and timely relocation. States that offer these types of pathways include for example, Germany,<sup>205</sup> Norway,<sup>206</sup> Switzerland<sup>207</sup> and the United States.<sup>208</sup> By and large, this category of visa is *not* commonly available, or at least not in the form that would be effective for journalists at risk.
135. Even amongst those few countries that do offer this type of visa, the number of persons who are granted it are low and while this pathway can be more expeditious and less costly than some of the alternatives, some States require applicants to provide evidence of full financial sponsorship or sufficient financial means, a condition that is often very difficult for journalists to fulfil, especially in the face of a fast-evolving threat.

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205 See **B. Temporary Humanitarian Pathways: The Short-Term/Humanitarian Visa** at §117.

206 See **B. Temporary Humanitarian Pathways: The Short-Term/Humanitarian Visa** at §119; see also the examples of permanent humanitarian visas offered by Australia at §130 and Canada at §132, for which applications can be made in a journalist's home State.

207 See **B. Temporary Humanitarian Pathways: The Short-Term/Humanitarian Visa** at §118.

208 See **B. Temporary Humanitarian Pathways: The Short-Term/Humanitarian Visa** at §108.

## Case study XII: Humanitarian parole granted to the Aldana family in the United States



- Ricardo Chávez Aldana is a radio journalist from Mexico. In 2009, he reported on drug cartels and corruption in Mexico, placing him and his family in danger of retaliation. Later that year, after receiving death threats and fearing violence, Mr. Aldana and his family fled Mexico for El Paso, Texas.
- In Texas, Mr. Aldana and his family were granted six-month humanitarian parole after asking for political asylum at the El Paso border crossing. This enabled them to apply for asylum in the United States, which was eventually granted in 2015.
- While Mr. Aldana and his family were not applying from abroad (and therefore not applying for the specific form of parole considered in this Report) and had already reached the border crossing before seeking humanitarian parole, the family's case demonstrates how temporary pathways such as humanitarian parole can facilitate time-sensitive protection for journalists at risk and their dependents.

Sources: Columbia Journalism Review, Allison Griner, 'Caught in the middle: Journalists seeking asylum often stuck in limbo', 17 August 2015, available online at: [www.cjr.org/analysis/journalists\\_seeking\\_asylum.php](http://www.cjr.org/analysis/journalists_seeking_asylum.php); El Paso Times, Diana Washington Valdez, 'Juárez journalist fleeing violence granted asylum', 5 October 2015, available online at: [www.elpasotimes.com/story/news/2015/10/05/jurez-journalist-fleeing-violence-wins-asylum/73422372](http://www.elpasotimes.com/story/news/2015/10/05/jurez-journalist-fleeing-violence-wins-asylum/73422372).

## C. Public-Private Sponsorship Programmes

### i. The current system

136. Private and/or community sponsorship programmes, where available, may allow groups of private citizens or certain organisations to take part in the resettlement of refugees by acting as sponsors. As sponsors, they can be involved in the selection phase, will provide financial support and otherwise assist in the integration of individuals in the country of resettlement.
137. Private and/or community sponsorship schemes can operate in addition to a State's resettlement quotas, as they do in Canada, or within a State's resettlement quotas, as they do in Australia. The Canadian programme is the most well-established and has inspired similar schemes in other States, including Australia,<sup>209</sup> Ireland,<sup>210</sup> New Zealand,<sup>211</sup> Spain<sup>212</sup> and the United Kingdom.<sup>213</sup> There is, at present, however, a marked difference in the scope and effectiveness of such programmes, amongst the scattering of States that offer them. The majority of these schemes form part of the relevant State's refugee resettlement processes.

### 1. Canada: the Private Sponsorship of Refugees Program

138. The Canadian Private Sponsorship of Refugees Program allows for refugees to resettle in Canada with support and funding from private or joint public-private sponsorship. The scheme was established in 1978 and was borne out of the Indochina refugee crisis in the 1970s. It has to date provided protection and a new home to over 327,000 refugees from over 175 countries.<sup>214</sup> Canada has estimated that between 2019 and 2021, it will settle, 59,000 privately-sponsored refugees.<sup>215</sup>
139. There are essentially four categories of private sponsor:<sup>216</sup>
- i. **Sponsorship Agreement Holders (SAHs):** These are unincorporated associations that have entered into a formal sponsorship agreement with Immigration, Refugees and Citizenship Canada (IRCC). The majority of SAHs are religious organisations, ethno-cultural groups, community or humanitarian organisations.
  - ii. **Constituent Groups (CGs):** CGs are authorised by a SAH to sponsor under its agreement. CGs must be based in the community where the sponsored refugee expects to settle and '*must have their*

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209 See C. Public-Private Sponsorship Programmes from §145.

210 Department of Justice Office for the Promotion of Migrant Integration, 'Community Sponsorship Ireland', last accessed October 2020, available online at: [www.integration.ie/en/isecc/pages/community\\_sponsorship\\_ireland](http://www.integration.ie/en/isecc/pages/community_sponsorship_ireland).

211 New Zealand Immigration, 'Refugee and protection', last accessed October 2020, available online at: [www.immigration.govt.nz/about-us/what-we-do/our-strategies-and-projects/supporting-refugees-and-asylum-seekers/refugee-and-protection-unit](http://www.immigration.govt.nz/about-us/what-we-do/our-strategies-and-projects/supporting-refugees-and-asylum-seekers/refugee-and-protection-unit).

212 Gobierno de Espana, 'Government and UNHCR implement pilot project on community sponsorship to take in and integrate refugees', 26 November 2018, available online at: [www.lamoncloa.gob.es/lang/en/gobierno/news/paginas/2018/20181126refugees.aspx](http://www.lamoncloa.gob.es/lang/en/gobierno/news/paginas/2018/20181126refugees.aspx).

213 Government of the UK, 'Community Sponsorship: How Can You Make It Happen', last accessed October 2020, available online at: [www.gov.uk/government/publications/community-sponsorship-how-you-can-make-it-happen](http://www.gov.uk/government/publications/community-sponsorship-how-you-can-make-it-happen). In addition, the European Commission's recent recommendation '*on legal pathways to protection in the EU: promoting resettlement, humanitarian admission and other complementary pathways*' has encouraged EU Member States to put in place or expand community sponsorship schemes: see European Commission, 'Commission Recommendation of 23.9.2020 on legal pathways to protection in the EU: promoting resettlement, humanitarian admission and other complementary pathways', 23 September 2020, available online at: [https://ec.europa.eu/info/sites/info/files/commission\\_recommendation\\_on\\_legal\\_pathways\\_to\\_protection\\_in\\_the\\_eu\\_promoting\\_resettlement\\_humanitarian\\_admission\\_and\\_other\\_complementary\\_pathways.pdf](https://ec.europa.eu/info/sites/info/files/commission_recommendation_on_legal_pathways_to_protection_in_the_eu_promoting_resettlement_humanitarian_admission_and_other_complementary_pathways.pdf).

214 Government of Canada, 'Thank you Canada', last accessed October 2020, available online at: [www.canada.ca/en/immigration-refugees-citizenship/services/refugees/40-years-psr.html](http://www.canada.ca/en/immigration-refugees-citizenship/services/refugees/40-years-psr.html).

215 Government of Canada, 'Thank you Canada', last accessed October 2020, available online at: [www.canada.ca/en/immigration-refugees-citizenship/services/refugees/40-years-psr.html](http://www.canada.ca/en/immigration-refugees-citizenship/services/refugees/40-years-psr.html).

216 Government of Canada, 'Private sponsorship of refugees program', last accessed October 2020, available online at [www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/guide-private-sponsorship-refugees-program/section-2.html](http://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/guide-private-sponsorship-refugees-program/section-2.html).

*sponsorship application and settlement plan approved and signed by their SAH before the undertaking is submitted to the Resettlement Operations Centre in Ottawa (ROC-O)*'.

- iii. **Groups of Five (G5):** Refugees can be sponsored by groups of a minimum of five Canadian citizens or permanent residents (over the age of 18)<sup>217</sup> who live in the expected settlement community. The G5 must collectively arrange to sponsor the refugee and must act as guarantors for the necessary support.
  - iv. **Community Sponsors (CSs):** This is any organisation, association or corporation located in the community where the refugee is expected to settle. The CS must demonstrate the willingness and ability to commit the necessary funds towards sponsorship and must undergo an assessment by ROC-O<sup>218</sup> each time they wish to sponsor.
140. A private sponsor must meet the applicable criteria for sponsorship:<sup>219</sup> i.e. they must, among other things, reside or have representatives in the expected community of settlement and make a sponsorship application that includes a settlement plan and a signed undertaking for a period of one year (unless an officer requires it to be more than one year, but not more than three years).<sup>220</sup>
141. A sponsorship agreement between the sponsor and the Minister of Citizenship and Immigration may be entered into in order to facilitate the processing of sponsorship applications, with provisions relating to settlement plans, financial requirements, assistance to be provided by the Department of Citizenship and Immigration, the standard of conduct expected of the sponsor, reporting requirements and the grounds for suspending or cancelling the agreement.<sup>221</sup> Sponsors are usually asked to agree to provide emotional, residential and financial support to the sponsored refugee.<sup>222</sup> The estimated annual settlement cost of a privately sponsored refugee (without family or dependents) is CA \$16,500.<sup>223</sup>
142. In order to begin the sponsorship process, a sponsoring group must complete the relevant sponsorship forms (including the undertaking, the settlement plan and the financial assessment for G5s and CSs) and the refugee must also complete a separate application for permanent residence.<sup>224</sup> Both parts of the application must then be submitted to ROC-O for processing. An overseas IRCC office will process the application for permanent residence for refugees living abroad.
143. Applicants will be interviewed by IRCC to determine if they are '*a member of the Convention Refugees Abroad Class or Country of Asylum Class*' and will undergo security and medical checks before any visa is granted.<sup>225</sup>

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217 Quebec operates a different system whereby groups of *two to five* people can apply to sponsor a refugee: Immigration, Francisation et Integration Quebec, 'Program for Refugees Abroad - Collective sponsorship', last accessed October 2020, available online at: [www.immigration-quebec.gouv.qc.ca/en/immigrate-settle/humanitarian-immigration/collective-sponsorship/index.html](http://www.immigration-quebec.gouv.qc.ca/en/immigrate-settle/humanitarian-immigration/collective-sponsorship/index.html).

218 The Resettlement Operations Centre in Ottawa is responsible for processing all Privately Sponsored Refugee (PSR) sponsorship applications: see Government of Canada, 'Private sponsorship of refugees program', last accessed October 2020, available online at: [www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/guide-private-sponsorship-refugees-program/section-2.html](http://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/guide-private-sponsorship-refugees-program/section-2.html).

219 Immigration and Refugee Protection Regulations (SOR/2002-227), Part 8 Refugee Classes, Division 2 Sponsorship, 153.

220 Immigration and Refugee Protection Regulations (SOR/2002-227), Part 8 Refugee Classes, Division 2 Sponsorship, 154(2).

221 Immigration and Refugee Protection Regulations (SOR/2002-227), Part 8 Refugee Classes, Division 2 Sponsorship, 152.

222 Government of Canada, 'Private sponsorship of refugees program', last accessed October 2020, available online at: [www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/guide-private-sponsorship-refugees-program/section-2.html](http://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/guide-private-sponsorship-refugees-program/section-2.html).

223 Government of Canada, 'Guide for Groups of Five to privately sponsor refugees (IMM 2200)', last accessed October 2020, available online at: [www.canada.ca/en/immigration-refugees-citizenship/services/application/application-forms-guides/guide-sponsor-refugee-groups-five.html#appendixA](http://www.canada.ca/en/immigration-refugees-citizenship/services/application/application-forms-guides/guide-sponsor-refugee-groups-five.html#appendixA).

224 Government of Canada, 'Private sponsorship of refugees program', last accessed October 2020, available online at: [www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/guide-private-sponsorship-refugees-program/section-2.html](http://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/guide-private-sponsorship-refugees-program/section-2.html).

225 Government of Canada, 'Private sponsorship of refugees program', last accessed October 2020, available online at: [www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/guide-private-sponsorship-refugees-program/section-2.html](http://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/guide-private-sponsorship-refugees-program/section-2.html).

144. These steps take time and the entire process can take several years. As at October 2020, processing times for applicants from the following countries were as follows: Egypt: 14 months; India: 23 months; Pakistan: 27 months; Sudan: 22 months, Syria: 29 months; Turkey: 13 months; and UAE: 32 months.<sup>226</sup>

## 2. *The Australian system*

145. Australia's Special Humanitarian Program (SHP) permits an application for a Global Special Humanitarian visa (subclass 202) to be made by those outside Australia and outside of their home country who have been subjected to substantial discrimination in their home country, amounting to a gross violation of human rights.

146. To be considered under this programme, an individual needs to be proposed by an Australian citizen or organisation and must be sponsored financially.<sup>227</sup> The Community Support Program (CSP), a subset of the SHP, similarly offers resettlement opportunities for those who are outside their home country and outside Australia, subject to substantial discrimination in their home country and employable and capable of financially supporting themselves by the end of their first year in Australia. The programme requires prospective applicants, among other things: (i) to identify people in Australia who are willing to provide financial support for their visa application and settlement; (ii) to have functional English; (iii) be aged between 18 and 50; (iv) to have a job offer (or skills to enable them to obtain a job quickly); and (v) to have their applications proposed by an approved community organisation.<sup>228</sup>

147. In 2019–2020, 40,232 applications were lodged under the SHP, with only 5,099 visas granted during that period, with the time for processing generally taking longer than a year.<sup>229</sup> For the CSP in particular, only 417 visas of the 1,000 places set aside for the programme were granted under the CSP and its predecessor, the Community Proposal Pilot.<sup>230</sup>

### ii. *The key impediments within the current system: Public-Private Sponsorship Programmes*

- Few States currently operate this alternative method of refugee resettlement;
- With the exception of Canada, the capacity of the existing schemes is very limited;
- The application and resettlement processes are invariably lengthy (too lengthy for journalists at risk) and often complex; and
- Journalists at risk must generally be able to find appropriate sponsors before any application can be made.

148. Although private and community sponsorships may appear attractive to States (as a means, for example, of alleviating the financial burden on the government), the length and complexity of the process presents a significant obstacle for journalists who require protection. In Canada – where the process has been running

226 Government of Canada, 'Check processing times', last accessed October 2020, available online at: [www.canada.ca/en/immigration-refugees-citizenship/services/application/check-processing-times.html](http://www.canada.ca/en/immigration-refugees-citizenship/services/application/check-processing-times.html).

227 Australia Government Department of Home Affairs, 'The Special Humanitarian Program (SHP)', last accessed October 2020, available online at: <https://immi.homeaffairs.gov.au/what-we-do/refugee-and-humanitarian-program/the-special-humanitarian-program>.

228 Australia Government Department of Home Affairs, 'Community Support Program (CSP)', last accessed October 2020, available online at: <https://immi.homeaffairs.gov.au/what-we-do/refugee-and-humanitarian-program/community-support-program/how-to-apply>; See also UNHCR, 'Handbook, Australia Chapter', 2011, revised 2016 and 2018, available online at: [www.unhcr.org/3c5e542d4.html](http://www.unhcr.org/3c5e542d4.html).

229 Australian Government Department of Home Affairs, 'Australia's offshore Humanitarian Program: 2019–20', 2020, pp. 4 and 11, available online at: [www.homeaffairs.gov.au/research-and-stats/files/australia-offshore-humanitarian-program-2019-20.pdf](http://www.homeaffairs.gov.au/research-and-stats/files/australia-offshore-humanitarian-program-2019-20.pdf).

230 Australian Government Department of Home Affairs, 'Australia's offshore Humanitarian Program: 2019–20', 2020, p. 28, available online at: [www.homeaffairs.gov.au/research-and-stats/files/australia-offshore-humanitarian-program-2019-20.pdf](http://www.homeaffairs.gov.au/research-and-stats/files/australia-offshore-humanitarian-program-2019-20.pdf).

for decades – it can take several years for a person to be resettled through the scheme.<sup>231</sup> For a journalist facing the threat of violence or harassment, such a lengthy period makes this pathway unviable in practice.

149. Secondly, there are at present very few States that offer this alternative method of refugee resettlement and, of the few States that do, there is a very considerable difference in the scope and capacity of the programmes run. For example, in contrast to the 59,000 refugees that Canada hopes to be able to resettle through its 2019-2021 scheme, the United Kingdom had – as at May 2020 – resettled 449 refugees with the support of its Community Sponsorship Scheme in the four years since its launch in 2016.<sup>232</sup>
150. Thirdly, and finally, particularly for Canada and Australia, this pathway is premised on private sponsorship and only a few programmes enable the matching of a refugee with a potential sponsor.<sup>233</sup> Journalists must, therefore, generally have the luxury of time and the means necessary to find sponsors who are willing, and able, to take on the considerable administrative and financial burdens of sponsorship. Neither luxury is generally available to the journalist at risk.

## D. International Protection

151. The term ‘International Protection’ refers to the protection offered by a State to a person from another country in which the State authorities are unable, or unwilling, to protect their fundamental rights.<sup>234</sup>
152. An ‘asylum seeker’ is a person in search of International Protection, whereas a ‘refugee’ is ‘*someone who has left his or her country of origin and is unable or unwilling to return there because of a serious threat to his or her life or freedom*’, meaning that not every asylum seeker is recognised as a refugee.<sup>235</sup>
153. The cornerstone of International Protection is the principle of *non-refoulement* which, on a fundamental level, requires that States do not return a person to a country where that person has reason to fear persecution.<sup>236</sup> It is the operation of this principle that effectively gives rise to International Protection. *Non-refoulement* is generally considered to be a norm of customary international law and is, therefore, binding on all States.<sup>237</sup>

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231 See **C. Public-Private Sponsorship Programmes** at §144.

232 See Gov.UK, ‘How many people do we grant asylum or protection to?’, 21 May 2020, available online at: [www.gov.uk/government/publications/immigration-statistics-year-ending-march-2020/how-many-people-do-we-grant-asylum-or-protection-to](http://www.gov.uk/government/publications/immigration-statistics-year-ending-march-2020/how-many-people-do-we-grant-asylum-or-protection-to).

233 See Government of Canada, ‘Blended Visa Office-Referred Program: About the process’, last accessed October 2020, available online at: [www.canada.ca/en/immigration-refugees-citizenship/services/refugees/help-outside-canada/private-sponsorship-program/blended-visa-office-program.html](http://www.canada.ca/en/immigration-refugees-citizenship/services/refugees/help-outside-canada/private-sponsorship-program/blended-visa-office-program.html).

234 UNHCR, ‘A guide to international refugee protection and building state asylum systems Handbook for Parliamentarians No 27’, 2017, p. 15, available online at: [www.unhcr.org/publications/legal/3d4aba564/refugee-protection-guide-international-refugee-law-handbook-parliamentarians.html](http://www.unhcr.org/publications/legal/3d4aba564/refugee-protection-guide-international-refugee-law-handbook-parliamentarians.html); see generally, James C. Hathaway and Michelle Foster, *The Law of Refugee Status*, 2nd Ed. Cambridge University Press: 2014.

235 UNHCR, ‘A guide to international refugee protection and building state asylum systems Handbook for Parliamentarians No 27’, 2017, p. 17, available online at: [www.unhcr.org/publications/legal/3d4aba564/refugee-protection-guide-international-refugee-law-handbook-parliamentarians.html](http://www.unhcr.org/publications/legal/3d4aba564/refugee-protection-guide-international-refugee-law-handbook-parliamentarians.html).

236 Convention Relating to the Status of Refugees, 28 July 1951, 189 UNTS 137 (entered into force 22 April 1954), Article 33(1).

237 UNHCR, ‘A guide to international refugee protection and building state asylum systems Handbook for Parliamentarians No 27’, 2017, p. 34, available online at: [www.unhcr.org/publications/legal/3d4aba564/refugee-protection-guide-international-refugee-law-handbook-parliamentarians.html](http://www.unhcr.org/publications/legal/3d4aba564/refugee-protection-guide-international-refugee-law-handbook-parliamentarians.html); see also Sir Elihu Lauterpacht and Daniel Bethlehem, ‘The Scope and Content of the Principle of Non-Refoulement: Opinion’, in Erika Feller, Volker Türk and Frances Nicholson (Eds.), *Refugee Protection in International Law: UNHCR’s Global Consultations on International Protection*, Cambridge University Press: 2003.



## **i. The international legal framework**

### **1. UN Refugee Convention protection<sup>238</sup>**

154. The 1951 UN Convention relating to the Status of Refugees (Refugee Convention) and its 1967 Protocol<sup>239</sup> form the foundations of the International Protection regime.<sup>240</sup> Under Article 1A(2) of the Refugee Convention, a 'refugee' is defined as:

*...any person who...owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or unwilling to return to it...*

155. In turn, Article 33 of the Refugee Convention provides for the *non-refoulement* obligation, as follows:<sup>241</sup>

- 1. No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of race, religion, nationality, membership of a particular social group or political opinion.*
- 2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.*

156. Journalists at risk who seek protection under the Refugee Convention must therefore establish a clear link between the persecution putting them at risk and one or more of the Refugee Convention grounds, as set out in Article 1. In practice, the most relevant and applicable two reasons for persecution are likely to be 'membership of a particular social group' and/or 'political opinion'.<sup>242</sup>

### **2. Non-Convention protection**

157. The limited nature of the definition of 'refugee' in the Refugee Convention will mean it does not cover many individuals who are in need of International Protection. This limitation was recognised at the time that the Convention was being adopted.<sup>243</sup>

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238 See generally James C. Hathaway and Michelle Foster, *The Law of Refugee Status*, 2nd Ed. Cambridge University Press: 2014.

239 Protocol Relating to the Status of Refugees, 31 January 1967, 606 UNTS 267 (entered into force 4 October 1967) (hereinafter Protocol). The Protocol effectively negated the geographical and temporal limitations that previously existed in the Refugee Convention.

240 The institutional counterpart is found in UNHCR, 'Statute of the Office of the United Nations High Commissioner for Refugees', UNGA Res 428 (V), 14 December 1950, available online at: [www.unhcr.org/3b66c39e1.pdf](http://www.unhcr.org/3b66c39e1.pdf).

241 Thomas Gammeltoft-Hansen, 'Refugee protection and the reach of the non-refoulement principle', in *Access to Asylum: International Refugee Law and the Globalisation of Migration Control*, Cambridge University Press: 2011, pp. 44-99. The obligation is also set out in express terms in Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It is also implied into certain human rights treaties, as in Article 7 of the ICCPR and Article 3 of the ECHR.

242 I.e. journalists will argue that their occupation (journalism) places them in a particular social group in need of protection and/or that that occupation is directly based on their exercise of the right to free expression and political opinion.

243 UN General Assembly, 'Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons,' 25 July 1951, available online at: [www.unhcr.org/protection/travaux/40a8a7394/final-act-United-nations-conference-Plenipotentiaries-status-refugees-stateless.html](http://www.unhcr.org/protection/travaux/40a8a7394/final-act-United-nations-conference-Plenipotentiaries-status-refugees-stateless.html). In particular, see Recommendation E: 'THE CONFERENCE EXPRESSES the hope that the Convention relating to the Status of Refugees will have value as an example exceeding its contractual scope and that all nations will be guided by it in granting so far as possible to persons in their territory as refugees and who would not be covered by the terms of the Convention, the treatment for which it provides.' See also, *R v. Secretary of State for the Home Dept, ex. P. Adan* [2001] 2 A.C. 477 (HL), at 500G-H: 'the Convention should afford continuing protection for refugees in the changing circumstances of the present and future world. In our view the Convention has to be regarded as a living instrument'.

158. For the purposes of this Report, Non-Convention protection refers to the other means of International Protection that may be open to those who do not fall within the scope of the Refugee Convention: State complementary protection regimes, regional protection mechanisms and temporary protection.<sup>244</sup> These alternative schemes of protection sometimes overlap with one another, and some operate, depending on State practice, a version of the extended definition of ‘refugee’ recognised by the UNHCR mandate,<sup>245</sup> which includes those who are ‘*outside their country of origin or habitual residence and unable to return there owing to serious and indiscriminate threats to life, physical integrity or freedom resulting from generalized violence or events seriously disturbing public order*’.<sup>246</sup>
159. A brief summary of these Non-Convention protection schemes follows.
- (i) *Complementary protection*<sup>247</sup>
160. ‘Complementary protection’ is not a term defined in any international instrument.<sup>248</sup> Rather, it is a phrase that has emerged over the course of the past couple of decades as a general description of the practice adopted by some States of providing relief from removal or deportation to asylum applicants who have failed in their claim for refugee status under the Refugee Convention.<sup>249</sup>
161. The term itself is used both by the UNHCR and by States, although the precise terminology can take varied forms,<sup>250</sup> including ‘*subsidiary protection*’ (as in the European Union), ‘*Country of Asylum Class (Humanitarian-Protected Persons Abroad)*’ (as in Canada),<sup>251</sup> or ‘*humanitarian protection*’ (as in the United Kingdom).<sup>252</sup>
162. But as a *legal* term, ‘complementary protection’ describes the protection granted by States on the basis of an International Protection need *outside* the Refugee Convention framework. Such protection may, for example, be based on a human rights treaty or on more general humanitarian principles, such as providing protection to individuals fleeing from generalised violence.<sup>253</sup> It can also be used to refer to protection provided based on compassionate circumstances unrelated to an International Protection need (e.g. health, old age),<sup>254</sup> and/or for practical reasons, such as the inability to secure travel documents.<sup>255</sup>

244 UNHCR, Ruma Mandal, ‘Protection Mechanisms Outside of the 1951 Convention (“Complementary Protection”)', June 2005, pp. viii, ix and 3, available online at: [www.unhcr.org/435df0aa2.pdf](http://www.unhcr.org/435df0aa2.pdf).

245 See generally, James C. Simeon (Ed.), *The UNHCR and the Supervision of International Refugee Law*, Cambridge University Press: 2013.

246 UNHCR, ‘Resettlement Handbook’, July 2011, p. 81, available online at: [www.unhcr.org/46f7c0ee2.pdf](http://www.unhcr.org/46f7c0ee2.pdf).

247 See generally, Jane McAdam, *Complementary Protection in International Refugee Law*, Oxford University Press: 2007.

248 Guy S. Goodwin-Gill, ‘The Language of Protection’ (1989) 1 *International Journal of Refugee Law*, pp. 6–19.

249 UNHCR, Ruma Mandal, ‘Protection Mechanisms Outside of the 1951 Convention (“Complementary Protection”)', June 2005, pp. viii and 32, available online at: [www.unhcr.org/435df0aa2.pdf](http://www.unhcr.org/435df0aa2.pdf).

250 UNHCR, Ruma Mandal, ‘Protection Mechanisms Outside of the 1951 Convention (“Complementary Protection”)', June 2005, pp. viii and 32, available online at: [www.unhcr.org/435df0aa2.pdf](http://www.unhcr.org/435df0aa2.pdf); see also: ‘UNHCR Resettlement Handbook’, July 2011, p. 20, available online at: [www.unhcr.org/46f7c0ee2.pdf](http://www.unhcr.org/46f7c0ee2.pdf).

251 Government of Canada, ‘Guide for Convention Refugees and Humanitarian-Protected Persons Abroad (IMM 6000)’, 28 May 2020, available online at: [www.canada.ca/en/immigration-refugees-citizenship/services/application/application-forms-guides/guide-6000-convention-refugees-abroad-humanitarian-protected-persons-abroad.html](http://www.canada.ca/en/immigration-refugees-citizenship/services/application/application-forms-guides/guide-6000-convention-refugees-abroad-humanitarian-protected-persons-abroad.html).

252 See the UK Immigration Rules, Part 11 339C, last accessed October 2020.

253 See, for instance, Switzerland’s 2005 Foreign Nationals and Integration Act of 16 December 2006, Chapter 11, Article 83(4).

254 Sometimes health or family reasons may also be tied to an International Protection need, such as under Articles 3 or 8 of the ECHR, and there remains some scope to test the extent to which compassionate reasons may in fact have a legal basis. However, generally they describe reasons for stay not linked to any legal ground; see, for example, UNHCR Executive Committee of the High Commissioner’s Programme, ‘Conclusion on the Provision of International Protection Including Through Complementary Forms of Protection No. 103(LVI)’, 7 October 2005, (j), available online at: [www.unhcr.org/en-us/excom/exconc/43576e292/conclusion-provision-international-protection-including-complementary-forms.html](http://www.unhcr.org/en-us/excom/exconc/43576e292/conclusion-provision-international-protection-including-complementary-forms.html).

255 See Executive Committee of the High Commissioner’s Programme, ‘Complementary Forms of Protection: Their Nature and Relationship to The International Refugee Protection Regime’, 9 June 2000, paras. 4-5, available online at: [www.unhcr.org/excom/standcom/3ae68d140/complementary-forms-protection-nature-relationship-international-refugee.html](http://www.unhcr.org/excom/standcom/3ae68d140/complementary-forms-protection-nature-relationship-international-refugee.html). During the drafting of the 1951 Convention, France had proposed that refugee status should extend to a person ‘*unable to obtain from [his or her] country [of origin] permission to return*’: ECOSOC, ‘Ad Hoc Committee on Statelessness and Related Problems, France: Proposal for a Draft Convention Preamble’, 17 January 1950, available online at: [www.unhcr.org/en-us/protection/statelessness/3ae68c18c/ad-hoc-committee-statelessness-related-problems-france-proposal-draftconvention.html](http://www.unhcr.org/en-us/protection/statelessness/3ae68c18c/ad-hoc-committee-statelessness-related-problems-france-proposal-draftconvention.html).

163. The 'complementary' aspect of complementary protection is not, then, the *form* of the protection or the resulting status accorded to an individual, but rather the *source* of the additional protection. Its principal function is to provide an alternative basis for eligibility for International Protection, and one that assesses International Protection needs on a *wider* basis than the principal international instrument, the Refugee Convention.<sup>256</sup>

(ii) *Regional refugee mechanisms*

164. Regional regimes may also offer protection for those who do not fall within the scope of the Refugee Convention.

165. **African System:** The 1969 Organisation of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa (the OAU Convention)<sup>257</sup> incorporates the Refugee Convention definition of 'refugee' in its Article I(1), but also provides in Article I(2) that:

*The term 'refugee' shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.*

166. The definition of 'refugee' under the OAU Convention therefore encompasses a broader category of persons than the Refugee Convention and, in particular, does not require the elements of deliberateness and discrimination that have been considered by some to be inherent in the Refugee Convention.<sup>258</sup>

167. The UNHCR notes<sup>259</sup> that most African States are party to the OAU Convention and have incorporated the broader definition into their national legislation. Therefore, the issue of complementary protection has not generally arisen in this region.

168. **Central and South America:** Conclusion three of the 1984 Cartagena Declaration on Refugees,<sup>260</sup> adopted at a conference with the participation of regional States, the UNHCR, the UNDP and local NGOs following the refugee movements in the 1970s and 1980s throughout Central America, provides that:

*(...)the definition or concept of a refugee to be recommended for use in the region is one which, in addition to containing the elements of the 1951 Convention and the 1967 Protocol, includes among refugees persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order.*

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256 UNHCR, Ruma Mandal, 'Protection Mechanisms Outside of the 1951 Convention ("Complementary Protection")', June 2005, available online at: [www.unhcr.org/435df0aa2.pdf](http://www.unhcr.org/435df0aa2.pdf).

257 Organisation of African Unity, 'Convention governing the specific aspects of refugee problems in Africa', 10 September 1969, 1001 U.N.T.S. 45.

258 See Eduardo Arboleda, 'The Refugee Definition in Africa and Latin America: The Lessons of Pragmatism', (1991) 3(2) International Journal of Refugee Law 185, p. 195; see also UNHCR, Micah Bond Rankin, 'Working Paper No. 113 Extending the limits or narrowing the scope? Deconstructing the OAU refugee definition thirty years on', April 2005, p. 7, available online at: [www.refworld.org/pdfid/4ff168782.pdf](http://www.refworld.org/pdfid/4ff168782.pdf); see also UNHCR, Ruma Mandal, 'Protection Mechanisms Outside of the 1951 Convention ("Complementary Protection")', June 2005, p. 13, available online at: [www.unhcr.org/435df0aa2.pdf](http://www.unhcr.org/435df0aa2.pdf). With respect to the grounds listed, 'external aggression', 'occupation' and 'foreign domination' were drafted within the context of decolonisation but still remain relevant in the context of international armed conflicts. The term 'events seriously disturbing public order', however, has attained greater significance. This term covers scenarios whereby the individual is not protected by the State due to severe undermining of peace and security to the extent that mechanisms for preventing, investigating and punishing crimes are rendered ineffective.

259 UNHCR, Ruma Mandal, 'Protection Mechanisms Outside of the 1951 Convention ("Complementary Protection")', June 2005, p. 13, available online at: [www.unhcr.org/435df0aa2.pdf](http://www.unhcr.org/435df0aa2.pdf).

260 Cartagena Colloquium, 'Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama', 19-22 November 1984, available online at: [www.oas.org/dil/1984\\_cartagena\\_declaration\\_on\\_refugees.pdf](http://www.oas.org/dil/1984_cartagena_declaration_on_refugees.pdf).

169. Although broader than the Refugee Convention in scope, the Cartagena Declaration's definition of 'refugee' requires a particular type of harm (threats to life, safety or freedom) and covers different grounds that can give rise to International Protection.<sup>261</sup>
170. While the Cartagena Declaration is not binding, the decision of States to incorporate its broader definition into their national legislation, together with the endorsements by the Organization of American States, the UNHCR Executive Committee and the States parties to the Refugee Convention, point to the declaration's regional and global importance.<sup>262</sup>
171. **Europe:** Both the Council of Europe and the European Union provide guidance for complementary protection schemes in the European region.
172. In its Recommendation (2001)18 of the Committee of Ministers to Member States on subsidiary protection, the Council of Europe provided a set of non-binding recommendations on complementary protection.<sup>263</sup>
173. Stressing that subsidiary protection measures should not undermine, but rather complement, those measures in the Refugee Convention and Protocol and underlining that the availability of subsidiary protection should not prejudice the rights of persons applying for refugee status, the Committee of Ministers recommended that:<sup>264</sup>

*Subsidiary protection should be granted by member states to a person who, on the basis of a decision taken individually by the competent authorities, does not fulfil the criteria for refugee status under the 1951 Convention and its 1967 Protocol but is found to be in need of International Protection:*

- *because that person faces a risk of torture or inhuman or degrading treatment or punishment in his/her country of origin; or*
  - *because that person has been forced to flee or remain outside his/her country of origin as a result of a threat to his/her life, security or liberty, for reasons of indiscriminate violence, arising from situations such as armed conflict; or*
  - *for other reasons recognised by the legislation or practice of the member state*
- and therefore cannot be returned to the country of origin.*

261 See generally, Eduardo Arboleda, 'The Cartagena Declaration of 1984 and Its Similarities to the 1969 OAU Convention - A Comparative Perspective' (1995), 7 International Journal of Refugee Law, pp. 87-101. Foreign aggression in the Cartagena Declaration may encompass the grounds of 'external aggression', 'occupation' and 'foreign domination' listed in the OAU Convention and 'generalized violence' and 'other events seriously disturbing public order' encompass the events that can be included under 'other events seriously disturbing public order.' The inclusion of 'massive violations of human rights' is a distinct point of departure from the OAU definition.

262 UNHCR, Ruma Mandal, 'Protection Mechanisms Outside of the 1951 Convention ("Complementary Protection")', June 2005, p. 15-16, available online at: [www.unhcr.org/435df0aa2.pdf](http://www.unhcr.org/435df0aa2.pdf); see OAS, General Assembly Resolution 1273 (XXIV-0/94), 10 June 1994, available online at: [www.oas.org/EN/PINFO/RES/RESGA94/agr1273e.htm](http://www.oas.org/EN/PINFO/RES/RESGA94/agr1273e.htm); UNHCR Executive Committee, 'General Conclusion on International Protection, Conclusion No. 77 (XLVI)', 20 October 1995, (a) and (c), available online at: [www.unhcr.org/excom/exconc/3ae68c438/general-conclusion-international-protection.html](http://www.unhcr.org/excom/exconc/3ae68c438/general-conclusion-international-protection.html); Meeting of States Parties, 'Declaration of States Parties to the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees', 12-13 December 2001, p. 81, available online at: [www.unhcr.org/419c74d64.pdf](http://www.unhcr.org/419c74d64.pdf).

263 Council of Europe: Committee of Ministers, 'Recommendation Rec (2001) 18 of the Committee of Ministers to Member States on Subsidiary Protection', 27 November 2001, available online at: [www.refworld.org/docid/3dde4c184.html](http://www.refworld.org/docid/3dde4c184.html).

264 Council of Europe: Committee of Ministers, 'Recommendation Rec (2001) 18 of the Committee of Ministers to Member States on Subsidiary Protection', 27 November 2001, available online at: [www.refworld.org/docid/3dde4c184.html](http://www.refworld.org/docid/3dde4c184.html).

174. The Committee of Ministers further suggested that Member States should consider granting a long-term residence permit to beneficiaries of subsidiary protection, if their stay is prolonged due to a continuation of the circumstances prompting their relocation.<sup>265</sup>
175. The minimum standards necessary for subsidiary protection in the European Union are found in Directive 2011/95/EU of the European Parliament and of the Council.<sup>266</sup> The EU Directive provides in its preamble that subsidiary protection should be complementary and additional to the refugee protection in the Refugee Convention<sup>267</sup> and that there should be common criteria for the application of subsidiary protection which should be drawn from the: (i) international obligations under human rights instruments; and (ii) practices of Member States.<sup>268</sup>
176. A person eligible for subsidiary protection is defined in Article 2(f) of the EU Directive as follows:
- a third-country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm as defined in Article 15, and to whom Article 17(1) and (2)<sup>269</sup> does not apply, and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country;*
177. Article 15 of the EU Directive defines ‘serious harm’ as: (i) the death penalty or execution; or (ii) the torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; or (iii) the serious and individual threat to a civilian’s life or person by reason of indiscriminate violence in situations of international or internal armed conflict.
178. **Asia:** While very few Asian States are party to the Refugee Convention and the 1967 Protocol, many States in the region do respond to the protection needs of asylum seekers.<sup>270</sup> It is of note that, the Revised Bangkok Principles,<sup>271</sup> adopted on 24 June 2001, adopted a definition of ‘refugee’ which is materially identical to the one used in the OAU Convention.<sup>272</sup>

265 Council of Europe: Committee of Ministers, ‘Recommendation Rec (2001) 18 of the Committee of Ministers to Member States on Subsidiary Protection’, 27 November 2001, paras. 5-7 available online at: [www.refworld.org/docid/3dde4c184.html](http://www.refworld.org/docid/3dde4c184.html). In terms of minimum standards of treatment under subsidiary protection, the Committee of Ministers said that Member States should ensure that applicants: are issued with documents certifying their legal status; are issued, in conformity with national law, with a travel document if the beneficiary has no access to such a document issued by the authorities of the country of origin; enjoy freedom of movement within the territory of the host State, restricted only by interests of national security or public order; have access to courts and administrative authorities; enjoy basic social and economic rights, in particular, access to housing, legal means of subsistence (access to social benefits or to the labour market), basic healthcare and, as appropriate, education or training.

266 European Parliament and Council, ‘Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011’, 13 December 2011, available online at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:337:0009:0026:en:PDF>. This Qualification Directive amends Council Directive 2004/83/EC of 29 April 2004.

267 European Parliament and Council, ‘Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011’, 13 December 2011, para. 33, available online at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:337:0009:0026:en:PDF>.

268 European Parliament and Council, ‘Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011’, 13 December 2011, para. 34, available online at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:337:0009:0026:en:PDF>.

269 Article 17 defines the exclusion grounds from subsidiary protection, including where there are serious reasons for considering that the person has committed a crime against peace, a war crime or crime against humanity, a serious crime or has been found guilty of acts contrary to the purposes and principles of the United Nations or constitutes a danger to the community or security of the Member State.

270 See UNHCR, Ruma Mandal, ‘Protection Mechanisms Outside of the 1951 Convention (“Complementary Protection”)', 2005, p. 20, available online at: [www.unhcr.org/435df0aa2.pdf](http://www.unhcr.org/435df0aa2.pdf); see, for example, the approach of India which is not a party to the Refugee Convention but does respond to the International Protection needs of asylum seekers: UNHCR, ‘Refugee Data Finder’, last accessed October 2020, available online at: [www.unhcr.org/refugee-statistics/download/?url=cG13](http://www.unhcr.org/refugee-statistics/download/?url=cG13).

271 Asian-African Legal Consultative Organization, ‘Final Text of the AALCO’s 1966 Bangkok Principles on Status and Treatment of Refugees as adopted on 24 June 2001 at the AALCO’s 40<sup>th</sup> Session, New Delhi (Bangkok Principles)’, as adopted on 24 June 2001, available online at: [www.refworld.org/docid/3de5f2d52.html](http://www.refworld.org/docid/3de5f2d52.html). The Bangkok Principles were adopted by AALCO, which has a membership of 48 African and Asian State. The Bangkok Principles are non-binding.

272 UNHCR, Ruma Mandal, ‘Protection Mechanisms Outside of the 1951 Convention (“Complementary Protection”)', 2005, p. 20, available online at: [www.unhcr.org/435df0aa2.pdf](http://www.unhcr.org/435df0aa2.pdf). See also Article 16 of the ASEAN Human Rights Declaration of 2012, which states ‘Every person has the right to seek and receive asylum in another State in accordance with the laws of such State and applicable international agreements’.

179. **The Middle East:** There are presently no binding regional instruments in the Middle East. The Arab Convention on Regulating Status of Refugees in the Arab Countries was adopted by the League of Arab States<sup>273</sup> in 1994. The Arab Convention definition of 'refugee' is more expansive than the Refugee Convention, including: '*[a]ny person who unwillingly takes refuge in a country other than his country of origin or his habitual place of residence because of sustained aggression against, occupation and foreign domination of such country or because of the occurrence of natural disasters or grave events resulting in major disruption of public order in the whole country or any part thereof.*'<sup>274</sup> The Convention has not, however, entered into force.<sup>275</sup> In 2017, the UNHCR and the League of Arab States signed a Memorandum of Understanding with the objective of creating a '*global cooperation framework*' for the purposes of responding more effectively to the needs of refugees in the region.<sup>276</sup>

*(iii) Temporary protection*<sup>277</sup>

180. Temporary protection is generally an exceptional measure that involves the grant of temporary stay or protection to asylum seekers due to particular situations that have arisen in their home countries such as, for instance, humanitarian crises.<sup>278</sup>

181. The UNHCR Guidelines on Temporary Protection<sup>279</sup> state that temporary protection arrangements are best suited to the following situations in which individual status determination is generally not feasible:

- i. large-scale influxes of asylum seekers or other similar humanitarian crises;
- ii. complex or mixed cross-border population movements, including boat arrivals and rescue at sea scenarios;
- iii. fluid or transitional contexts (e.g. at the beginning of a crisis where the exact cause and character of the movement may be uncertain, or at the end of a crisis, when the motivation for departure may need further assessment); and
- iv. other exceptional and temporary conditions in the country of origin necessitating International Protection and which prevent return in safety and dignity.

182. Temporary protection is used by some States to offer a short-term emergency response to the mass influx of asylum seekers.<sup>280</sup> This approach was deployed by a number of European States in response to the

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273 League of Arab States, 'Arab Convention on Regulating Status of Refugees in the Arab Countries', 1994, available online at: [www.refworld.org/docid/4dd5123f2.html](http://www.refworld.org/docid/4dd5123f2.html).

274 League of Arab States, 'Arab Convention on Regulating Status of Refugees in the Arab Countries', 1994, available online at: [www.refworld.org/docid/4dd5123f2.html](http://www.refworld.org/docid/4dd5123f2.html).

275 UNHCR, 'A guide to international refugee protection and building state asylum systems Handbook for Parliamentarians No 27', 2017, p. 21, available online at: [www.unhcr.org/publications/legal/3d4aba564/refugee-protection-guide-international-refugee-law-handbook-parliamentarians.html](http://www.unhcr.org/publications/legal/3d4aba564/refugee-protection-guide-international-refugee-law-handbook-parliamentarians.html).

276 UNHCR, 'UNHCR and League of Arab States sign agreement to address refugee challenges in the Arab region', 22 September 2017, available online at [www.unhcr.org/en-us/news/press/2017/9/59c4d7024/unhcr-league-arab-states-sign-agreement-address-refugee-challenges-arab.html](http://www.unhcr.org/en-us/news/press/2017/9/59c4d7024/unhcr-league-arab-states-sign-agreement-address-refugee-challenges-arab.html). In 2019, the UNHCR and the League of Arab States launched 'The Arab Strategy for the Protection of Children in Asylum Context in the Arab Region' which aimed to establish the basis of safe environments for refugee children: see UNHCR, 'UNHCR, League of Arab States launch the "Arab Strategy for the Protection of Refugee Children"', 24 November 2019, available online at: [www.unhcr.org/eg/13535-unhcr-league-of-arab-states-launch-the-arab-strategy-for-the-protection-of-children-in-asylum-context-in-the-arab-region.html](http://www.unhcr.org/eg/13535-unhcr-league-of-arab-states-launch-the-arab-strategy-for-the-protection-of-children-in-asylum-context-in-the-arab-region.html).

277 See generally, Meltem Ineli Ciğer, *Temporary Protection in Law and Practice*, (Brill, 2018).

278 UNHCR, 'Guidelines on Temporary Protection or Stay Arrangements', February 2014, available online at: [www.unhcr.org/en-us/protection/expert/5304b71c9/guidelines-temporary-protection-stay-arrangements.html](http://www.unhcr.org/en-us/protection/expert/5304b71c9/guidelines-temporary-protection-stay-arrangements.html).

279 UNHCR, 'Guidelines on Temporary Protection or Stay Arrangements', February 2014, paras. 9-10, available online at: [www.unhcr.org/en-us/protection/expert/5304b71c9/guidelines-temporary-protection-stay-arrangements.html](http://www.unhcr.org/en-us/protection/expert/5304b71c9/guidelines-temporary-protection-stay-arrangements.html).

280 UNHCR, 'Guidelines on Temporary Protection or Stay Arrangements', February 2014, paras. 3-4, available online at: [www.unhcr.org/en-us/protection/expert/5304b71c9/guidelines-temporary-protection-stay-arrangements.html](http://www.unhcr.org/en-us/protection/expert/5304b71c9/guidelines-temporary-protection-stay-arrangements.html).

movement of people fleeing the 1990s conflict in former Yugoslavia.<sup>281</sup> It is also the approach that Turkey has adopted towards persons fleeing the Syrian Conflict.<sup>282</sup>

## ii. *The current system*

183. For journalists at risk, as for others, there are two primary ways of obtaining International Protection: (i) applying for asylum in the proposed host country; and (ii) being referred for resettlement through the UNHCR process.<sup>283</sup>

### 1. *Asylum application in the host State*

184. A journalist must ordinarily be *outside* of his or her home State to seek refugee status under the Refugee Convention.<sup>284</sup> Each State party to the Refugee Convention must establish a procedure that it considers to be the most appropriate with respect to its constitutional and administrative structure.<sup>285</sup>

185. Unsurprisingly, the procedures adopted by States vary significantly: some consider refugee status through procedures specifically established for this purpose, others consider it within the general framework of the admission of foreign nationals, and others determine refugee status under informal arrangements or ad hoc procedures for specific purposes.<sup>286</sup> Generally, an applicant would need to submit an application with reasons and supporting evidence regarding why they cannot return home. Depending on domestic legal requirements, the application would address Refugee Convention grounds and/or the State's complementary protection regime.

### 2. *Resettlement through the UNHCR*

186. Resettlement through the auspices of the UNHCR is '*the selection and transfer of refugees from a State in which they have sought protection to a third State that is willing to accept them as refugees, with permanent residence status*'.<sup>287</sup>

187. Resettlement offers a refugee a solution with protection against *refoulement*, access to rights similar, or equivalent, to those enjoyed by the nationals of the resettling country and the opportunity to eventually become a naturalised citizen.<sup>288</sup> There are two preconditions for resettlement: (i) the applicant must be determined to be a refugee by the UNHCR; and (ii) resettlement must be identified by the UNHCR to be the most appropriate solution for the applicant.<sup>289</sup>

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281 See: European Union: Council of the European Union, 'Council Directive 2001/55/EC of 20 July 2001 on Minimum Standards for Giving Temporary Protection in the Event of a Mass Influx of Displaced Persons and on Measures Promoting a Balance of Efforts Between Member States in Receiving such Persons and Bearing the Consequences Thereof', 20 July 2001, available online at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:212:0012:0023:EN:PDF>.

282 The Law on Foreigners and International Protection of 4 April 2013 (No. 6458), Article 91. While the Refugee Protocol effectively negated the geographical and temporal limitations that existed in the Refugee Convention, Turkey retains the geographical limitation in the Refugee Convention, meaning that it will only grant refugee status to those fleeing due to '*events occurring in Europe*'.

283 The UNHCR has plans to grow its resettlement initiatives; see generally UNHCR, 'Three-Year Strategy (2019–2021) on Resettlement and Complementary Pathways', June 2019, available online at: [www.unhcr.org/5d15db254.pdf](http://www.unhcr.org/5d15db254.pdf).

284 See James C. Hathaway and Michelle Foster, 'Alienage' in *The Law of Refugee Status*, 2nd Ed. Cambridge University Press: 2014, pp. 17-90.

285 UNHCR, 'Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection', February 2019, p. 42, available online at: [www.unhcr.org/en-us/publications/legal/5ddfc47/handbook-procedures-criteria-determining-refugee-status-under-1951-convention.html](http://www.unhcr.org/en-us/publications/legal/5ddfc47/handbook-procedures-criteria-determining-refugee-status-under-1951-convention.html). Although the Refugee Convention mentions refugee status determination (see Article 9), it does not specifically provide for its regulation and the type of procedures to be used.

286 UNHCR, 'Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection', February 2019, p. 42, available online at: [www.unhcr.org/en-us/publications/legal/5ddfc47/handbook-procedures-criteria-determining-refugee-status-under-1951-convention.html](http://www.unhcr.org/en-us/publications/legal/5ddfc47/handbook-procedures-criteria-determining-refugee-status-under-1951-convention.html).

287 UNHCR, 'Resettlement Handbook', July 2011, p. 3, available online at: [www.unhcr.org/46f7c0ee2.pdf](http://www.unhcr.org/46f7c0ee2.pdf).

288 UNHCR, 'Resettlement Handbook', July 2011, p. 3, available online at: [www.unhcr.org/46f7c0ee2.pdf](http://www.unhcr.org/46f7c0ee2.pdf).

289 Exceptions to the precondition of refugee recognition are non-refugee stateless persons and dependent family members of refugees. UNHCR, 'Resettlement Handbook', July 2011, p. 75, available online at: [www.unhcr.org/46f7c0ee2.pdf](http://www.unhcr.org/46f7c0ee2.pdf).

188. Journalists must be outside of their home State in order to benefit from the UNHCR resettlement programme. Once they have reached a second country – possibly a neighbouring country – the process generally proceeds as follows:
- i. A journalist can seek the assistance of an NGO who may refer the case to the UNHCR or contact the local UNHCR resettlement office directly.
  - ii. Upon referral, the UNHCR will verify the registration and refugee status of the case and schedule an interview, during which a wide range of topics will be covered, including the refugee claim and assessing resettlement needs.
  - iii. The UNHCR will then submit a Resettlement Registration Form (RRF) recording biographical information, refugee claims (and the UNHCR determination) and a full assessment of resettlement needs, taking into account various factors.
  - iv. The UNHCR will identify a suitable resettlement State.<sup>290</sup>
  - v. The RRF is then reviewed by a reviewing officer and recommendations are made as to whether to submit that journalist's case to a resettlement State.<sup>291</sup>
189. Only a few States take part in the UNHCR's resettlement programme<sup>292</sup> and the resettlement practices of States vary significantly. Participating in the programme generally involves States agreeing to consider a certain number of submissions by the UNHCR each year<sup>293</sup> with States generally setting an 'annual resettlement quota' of refugees that they will receive each year.
190. Some States will consider the UNHCR's submissions on a dossier basis; others will conduct individual resettlement interviews.<sup>294</sup> While recognition as a refugee under the UNHCR mandate carries significant weight for countries accepting asylum applications, States adopt varying approaches to the recognition of persons as refugees, in accordance with their own national legislation. Some States have a broader refugee definition in domestic law, while others may permit persons fleeing generalised violence to stay on their territory, with a different status than that of a refugee.<sup>295</sup> Many resettlement States do, however, restrict their programmes to persons meeting the criteria outlined in the Refugee Convention. This means that, in practice, resettlement of a person recognised as a refugee under the broader UNHCR definition may prove to be challenging.<sup>296</sup>
191. While States have primary responsibility for determining whether persons arriving in their territories are entitled to International Protection, under certain circumstances, the UNHCR may provide assistance or undertake the refugee status determination process under its own mandate.<sup>297</sup> The UNHCR's participation in refugee status determination is based on Article 35 of the Refugee Convention and Article 11 of the 1967 Protocol, which provide for the co-operation of Contracting States and the UNHCR.<sup>298</sup>

290 UNHCR, 'Information on UNHCR Resettlement', last accessed October 2020, available online at [www.unhcr.org/information-on-unhcr-resettlement.html](http://www.unhcr.org/information-on-unhcr-resettlement.html).

291 UNHCR, 'Resettlement Handbook', July 2011, p. 335, available online at: [www.unhcr.org/46f7c0ee2.pdf](http://www.unhcr.org/46f7c0ee2.pdf).

292 UNHCR, 'Resettlement', last accessed October 2020, available online at: [www.unhcr.org/en-us/resettlement.html](http://www.unhcr.org/en-us/resettlement.html).

293 UNHCR, 'Frequently asked questions about resettlement', February 2017, pp. 5 and 7, available online at: [www.unhcr.org/en-us/56fa35b16](http://www.unhcr.org/en-us/56fa35b16).

294 UNHCR, 'Information on UNHCR Resettlement', last accessed October 2020, available online at [www.unhcr.org/information-on-unhcr-resettlement.html](http://www.unhcr.org/information-on-unhcr-resettlement.html).

295 UNHCR, 'Resettlement Handbook', July 2011, p. 20, available online at: [www.unhcr.org/46f7c0ee2.pdf](http://www.unhcr.org/46f7c0ee2.pdf).

296 UNHCR, 'Resettlement Handbook', July 2011, p. 77, available online at: [www.unhcr.org/46f7c0ee2.pdf](http://www.unhcr.org/46f7c0ee2.pdf).

297 UNHCR, 'Resettlement Handbook', July 2011, p. 75, available online at: [www.unhcr.org/46f7c0ee2.pdf](http://www.unhcr.org/46f7c0ee2.pdf).

298 UNHCR, 'Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection', February 2019, p. 43, available online at: [www.unhcr.org/en-us/publications/legal/5ddfcdc47/handbook-procedures-criteria-determining-refugee-status-under-1951-convention.html](http://www.unhcr.org/en-us/publications/legal/5ddfcdc47/handbook-procedures-criteria-determining-refugee-status-under-1951-convention.html). The process generally involves registration by the UNHCR, a registration interview, followed by the issuance of an Asylum Seeker Certificate, a UNHCR interview to determine refugee status and then a decision and/or appeal of a decision: see RSF, 'Guidelines for exiled journalists', June 2009, pp. 5-6, available online at: [www.refworld.org/pdfid/4a5af1512.pdf](http://www.refworld.org/pdfid/4a5af1512.pdf).



192. The UNHCR categorises submissions according to priority levels: emergency, urgent and normal. The majority of cases fall under the normal priority category.<sup>299</sup> The UNHCR notes that it expects decisions (and departures for resettlement) for these cases within 12 months of submission.<sup>300</sup> State practice with respect to emergency and urgent cases varies. For example, some States designate emergency sub-quotas as part of their annual resettlement quotas,<sup>301</sup> while other States may consider submissions from the UNHCR on emergency resettlement and have the capacity to respond expeditiously when necessary.<sup>302</sup>
193. Since no State is legally obligated to resettle refugees, only a certain number of States provide annual resettlement quotas with regular programmes, while others accept refugees on an ad hoc basis, or maintain special resettlement programmes for refugees with specific needs.<sup>303</sup> The UNHCR notes that in 2019, for instance, 63,726 refugees were accepted for resettlement with the UNHCR's assistance with the leading countries being the United States (21,159), Canada (9,031), the United Kingdom (5,774), Sweden (4,993), and Germany (4,622).<sup>304</sup> In 2018, 55,700 refugees were accepted for resettlement by 27 countries around the world.<sup>305</sup> In 2017, 65,108 individuals departed for resettlement,<sup>306</sup> and in 2016, that number was 126,291.<sup>307</sup>

299 UNHCR, 'Resettlement Handbook', July 2011, pp. 246-247, available online at: [www.unhcr.org/46f7c0ee2.pdf](http://www.unhcr.org/46f7c0ee2.pdf).

300 UNHCR, 'Resettlement Handbook', July 2011, pp. 246-247, available online at: [www.unhcr.org/46f7c0ee2.pdf](http://www.unhcr.org/46f7c0ee2.pdf).

301 Canada, for example, states that it is able to take up to 100 persons under its urgent protection programme (UNHCR equivalent emergency): UNHCR, 'UNHCR Resettlement Handbook – Canada', July 2011, revised February 2018, available online at: [www.unhcr.org/3c5e55594.html](http://www.unhcr.org/3c5e55594.html); see also New Zealand which allocates 35 places globally to emergency cases: UNHCR, 'UNHCR Resettlement Handbook – New Zealand', July 2011, revised October 2014, revised March 2018, available online at: [www.unhcr.org/3c5e59d04.html](http://www.unhcr.org/3c5e59d04.html).

302 See, for example, the United Kingdom which states that it has no emergency resettlement mechanism but will consider a small number of urgent cases upon request: UNHCR, 'UNHCR Resettlement Handbook – United Kingdom of Great Britain and Northern Ireland', August 2011, revised July 2014 and March 2018, available online at: [www.unhcr.org/40ee6fc04.html](http://www.unhcr.org/40ee6fc04.html); see also the United States which has no specific quota for emergency cases and only a very limited capacity to process applicants from referral to arrival in approximately 16 weeks: UNHCR, 'UNHCR Resettlement Handbook – The United States of America', October 2014, revised May 2018, available online at: [www.unhcr.org/3c5e5a764.html](http://www.unhcr.org/3c5e5a764.html); see generally UNHCR, 'Resettlement Handbook', July 2011, p. 355, available online at: [www.unhcr.org/46f7c0ee2.pdf](http://www.unhcr.org/46f7c0ee2.pdf).

303 UNHCR, 'Resettlement Handbook', July 2011, pp. 5, 386, available online at: [www.unhcr.org/46f7c0ee2.pdf](http://www.unhcr.org/46f7c0ee2.pdf). The UNHCR Handbook includes Argentina, Australia, Belgium, Brazil, Bulgaria, Canada, Chile, Czech Republic, Denmark, Finland, France, Germany, Iceland, Ireland, Italy, Netherland, New Zealand, Norway, Portugal, Romania, Sweden, UK, USA and Uruguay as resettlement States. See also European Commission, 'Commission Recommendation of 23.9.2020 on legal pathways to protection in the EU: promoting resettlement, humanitarian admission and other complementary pathways', 23 September 2020, available online at: [https://ec.europa.eu/info/sites/info/files/commission\\_recommendation\\_on\\_legal\\_pathways\\_to\\_protection\\_in\\_the\\_eu\\_promoting\\_resettlement\\_humanitarian\\_admission\\_and\\_other\\_complementary\\_pathways.pdf](https://ec.europa.eu/info/sites/info/files/commission_recommendation_on_legal_pathways_to_protection_in_the_eu_promoting_resettlement_humanitarian_admission_and_other_complementary_pathways.pdf). This notes that the European Union needs to move from ad hoc resettlement schemes to those '*that operate on the basis of a stable framework that ensures that Union resettlement schemes are sustainable and predictable*'. The European Commission's New Pact will seek to '*formalise the current ad hoc scheme of approximately 29,500 resettlement places already being implemented by Member States, and cover a two-year period, 2020-2021*'. See European Commission, 'New Pact on Migration and Asylum: Questions and Answers', 23 September 2020, available online at: [https://ec.europa.eu/commission/presscorner/detail/en/qanda\\_20\\_1707#contains](https://ec.europa.eu/commission/presscorner/detail/en/qanda_20_1707#contains).

304 UNHCR, 'Resettlement at a Glance (January-December 2019)', 14 March 2020, available online at: [www.unhcr.org/protection/resettlement/5e31448a4/resettlement-fact-sheet-2019.html](http://www.unhcr.org/protection/resettlement/5e31448a4/resettlement-fact-sheet-2019.html).

305 UNHCR, 'Information on UNHCR Resettlement', last accessed October 2020, available online at: [www.unhcr.org/en-us/information-on-unhcr-resettlement.html#:~:text=In%202018%2C%2027%20countries%20around,%2C%20and%20Sweden%20\(4%2C900\)](http://www.unhcr.org/en-us/information-on-unhcr-resettlement.html#:~:text=In%202018%2C%2027%20countries%20around,%2C%20and%20Sweden%20(4%2C900)).

306 UNHCR, 'Resettlement at a Glance 2017 in review', 15 March 2018, available online at: [www.unhcr.org/en-us/protection/resettlement/5a9d507f7/resettlement-fact-sheet-2017.html](http://www.unhcr.org/en-us/protection/resettlement/5a9d507f7/resettlement-fact-sheet-2017.html).

307 UNHCR, 'UNHCR Resettlement Fact Sheet 2016', 2017, available online at: [www.unhcr.org/en-us/protection/resettlement/59364f887/resettlement-fact-sheet-2016.html](http://www.unhcr.org/en-us/protection/resettlement/59364f887/resettlement-fact-sheet-2016.html); in 2015: 81,893; 2014: 73,608; 2013: 71,449.

### Case study XIII: Asylum in United States for Russian reporter Fatima Tlisova



- Fatima Tlisova is an investigative journalist from Russia. She was previously a reporter in the North Caucasus region of Russia and covered the Russian/Chechen conflict in the early 2000s. Among several awards, she received the Zeit-Stiftung Gerd Bucerius Award in 2006 and the Louis M. Lyons Award for Conscience and Integrity in Journalism in 2009.
- Ms. Tlisova was the subject of a concerted campaign of intimidation and persecution as a result of her reporting. In 2005, she was kidnapped by Russian security forces and tortured. In 2007, after a colleague's murder, the raid of her parents' house, and after receiving several warnings, Ms. Tlisova decided to flee Russia in the midst of these ongoing threats.
- Ms. Tlisova first fled to Turkey and was afterwards granted refugee status in the United States where she resettled and, eventually, with the support of US-based NGOs was able to resume her career in journalism. During 2007-2008, Ms. Tlisova was a fellow at the Carr Center for Human Rights at the Harvard Kennedy School of Government, and a Nieman Journalism Fellow at Harvard University for the 2008-2009 academic year. In 2015, she was invited to the White House to meet President Obama on the occasion of World Press Freedom Day.
- Ms. Tlisova now lives in Washington D.C. and works for the Russian-language service of the Voice of America.

Sources: Harvard, 'Nieman Presents Louis M. Lyons Award to Fatima Tlisova', 7 May 2009, available online at: <https://news.harvard.edu/gazette/story/2009/05/nieman-presents-louis-m-lyons-award-to-fatima-tlisova/>; Index on Censorship, 'Project Exile: Reporter escaped Russia after beating, burns', 10 July 2019, available online at: [www.indexoncensorship.org/2019/07/fatima-tlisova-project-exile-reporter-escaped-russia-after-beating-burns](http://www.indexoncensorship.org/2019/07/fatima-tlisova-project-exile-reporter-escaped-russia-after-beating-burns); Pulitzer Center, 'Fatima Tlisova', last accessed October 2020, available online at: <https://pulitzercenter.org/people/fatima-tlisova>; Pulitzer Center, 'Journalism and Censorship in the Caucasus: Revisiting Stories Never Told', last accessed October 2020, available online at: <https://pulitzercenter.org/projects/eastern-europe/journalism-and-censorship-caucasus-revisiting-stories-never-told>.

### iii. *The key impediments within the current system: International Protection*

- Difficulty leaving home countries and lawfully entering another country to apply for asylum or access the UNHCR resettlement programme;
- Potential legal and evidential hurdles for journalists at risk of meeting the definition of 'refugee' under the Refugee Convention;
- Long-term nature of International Protection deters some journalists from this pathway; their ultimate aim being to return to work as a journalist in their home State, as soon as it is safe to do so;
- Low acceptance rates of refugees due to only a minority of States participating in the UNHCR resettlement programmes;
- Extended waiting times due to low acceptance rates and complexity of the system; and
- Lack of effective procedure in place for mass need for relocation of journalists in most States.

194. Applications for International Protection ordinarily require applicants to be *outside* of their country of origin. As documented in this Report, journalists at risk can face significant difficulties leaving their home States and are generally likely to face significant obstacles to their movement.<sup>308</sup> For those journalists this precondition is an impediment to even commencing the application process for International Protection.
195. Even journalists who can travel and are therefore able to make an International Protection claim are often faced with the reality that 'International Protection' may in fact offer them no real protection at all. This is because of the legal and evidential requirements to make good a claim of 'refugee' status.
196. In making a claim for protection under the Refugee Convention, applicants must show a well-founded fear of being persecuted in their home country for one of five enumerated reasons.<sup>309</sup> For journalists, the most relevant and applicable two reasons for persecution are '*membership of a particular social group*' and '*political opinion*'.
197. **Membership of a particular social group:** Certain States will only recognise '*membership of a particular social group*' where there is an innate, fundamental or '*immutable characteristic*' that is common amongst its members. In turn, journalists who make claims on this basis may fail simply on the basis that their occupation, as journalists, is deemed to be capable of change and therefore not an '*immutable characteristic*'.
198. A last-minute addition to the Refugee Convention,<sup>310</sup> '*membership of a particular social group*' is not a defined term and many States have left it undefined in their domestic legislation when implementing the Refugee Convention. This means that the question of whether or not a journalist at risk qualifies as a member of a particular social group is uncertain and will vary from jurisdiction to jurisdiction.
199. In certain States, there is an understanding (and/or legal precedent to the effect) that recognition of a '*particular social group*' requires an innate, fundamental or '*immutable characteristic*' that is common

308 See **Circumstances making relocation necessary for a journalist: the 'risk'** (in particular, **A. Criminalisation of journalistic activity** from §40; and **D. Travel bans and the revocation of travel documents** from §53).

309 The five enumerated grounds listed in Article 1 of the Refugee Convention are race, religion, nationality and membership of a particular social group or political opinion.

310 UNHCR, Michelle Foster, 'The 'Ground with the Least Clarity': A Comparative Study of Jurisprudential Developments relating to 'Membership of a Particular Social Group'', August 2012, p. 2, available online at: [www.unhcr.org/protection/globalconsult/4f7d8d189/25-ground-clarity-comparative-study-jurisprudential-developments-relating.html](http://www.unhcr.org/protection/globalconsult/4f7d8d189/25-ground-clarity-comparative-study-jurisprudential-developments-relating.html).

amongst that group's members.<sup>311</sup> Journalists may view their profession as fundamental to their individual identity<sup>312</sup> and incapable of change, but this has not always been recognised as such by domestic courts applying refugee law.<sup>313</sup>

200. Edward Carter and Brad Clark from Brigham Young University found in their research that from 1997-2007 at least 30 non-US journalists argued before the United States Court of Appeals that their asylum applications were erroneously denied. Only six were successful.<sup>314</sup> Among the likely reasons for this appears to have been a reluctance on the part of the Federal Courts to recognise journalists as members of a 'particular social group' under the Immigration and Nationality Act.<sup>315</sup>
201. **Political opinion:** Proceeding on the alternative basis of making a claim of persecution '*for reasons of... political opinion*' is no more straightforward. The law on the issue of whether a journalist has a '*political opinion*' or should be considered '*non-partisan*' is inconsistent across, and sometimes within, different States.<sup>316</sup> The result is that journalists who seek protection on this ground may find their claims rejected for failing to meet this threshold requirement.
202. Often journalists do not consider themselves to be politically partisan, and for good reason. This means the political opinion gateway to protection may not be one they will be willing to pursue. By way of example, when Iraqi journalist Mohammed Muhsib fled to Syria in 2007, he is reported to have told UN workers that he did not want to be a political refugee on the basis that he did not see his journalistic reporting as partisan.<sup>317</sup>
203. In some national courts, journalism has been held to be a work that '*overtly manifests a political opinion*'.<sup>318</sup> Other courts have considered whether the claimed persecution for political opinion involves the persecutors'

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311 See, for example, Migration Act 1958 (Cth) Australia, Section 5L, last accessed October 2020, available online at: [www.legislation.gov.au/Details/C2020C00260](http://www.legislation.gov.au/Details/C2020C00260); see also United States Board of Immigration Appeals, *Matter of Acosta*, Case No. A-24159781, 1 March 1985, as cited in UNHCR, Michelle Foster, 'The 'Ground with the Least Clarity': A Comparative Study of Jurisprudential Developments relating to 'Membership of a Particular Social Group'', August 2012, p. 6, available online at: [www.unhcr.org/protection/globalconsult/4f7d8d189/25-ground-clarity-comparative-study-jurisprudential-developments-relating.html](http://www.unhcr.org/protection/globalconsult/4f7d8d189/25-ground-clarity-comparative-study-jurisprudential-developments-relating.html).

312 See generally discussion in Council of Europe, Marilyn Clark and William Horsley, 'A Mission to Inform: Journalists at risk speak out', September 2020, pp. 119-120, available online at: <https://rm.coe.int/prems-021220-gbr-2018-a-mission-to-inform-journalists-at-risk-speak-ou/16809ff1e2>.

313 Columbia Journalism Review, Allison Griner, 'Caught in the middle: Journalists seeking asylum often stuck in limbo', 17 August 2015, available online at: [www.cjr.org/analysis/journalists\\_seeking\\_asylum.php](http://www.cjr.org/analysis/journalists_seeking_asylum.php); see also UNHCR, Michelle Foster, 'The 'Ground with the Least Clarity': A Comparative Study of Jurisprudential Developments relating to 'Membership of a Particular Social Group'', August 2012, pp. 71-72, available online at: [www.unhcr.org/protection/globalconsult/4f7d8d189/25-ground-clarity-comparative-study-jurisprudential-developments-relating.html](http://www.unhcr.org/protection/globalconsult/4f7d8d189/25-ground-clarity-comparative-study-jurisprudential-developments-relating.html). By comparison, the English Court of Appeal, when considering the case of a Somali journalist who had applied on the basis of political opinion, rejected the State Secretary's argument that it was reasonable to ask the applicant to modify his behaviour by not engaging in his chosen career of journalism: *MSM (Somalia) v. Secretary of State for the Home Department*, [2016] EWCA Civ 715.

314 Edward L. Carter and Brad Clark, "'Membership in a Particular Social Group": International Journalists and U.S. Asylum Law', (2007) 12:3 Communication Law and Policy 279, pp. 279-312, available online at: <https://scholarsarchive.byu.edu/cgi/viewcontent.cgi?article=1927&context=facpub>.

315 See Edward L. Carter and Brad Clark, "'Membership in a Particular Social Group": International Journalists and U.S. Asylum Law', (2007) 12:3 Communication Law and Policy 279, pp. 298-301, available online at: <https://scholarsarchive.byu.edu/cgi/viewcontent.cgi?article=1927&context=facpub>.

316 See for example Katy Mann, 'Reporters as Refugees: Applying United States Asylum Laws to Persecuted Journalists in Mexico', (2012) 35 Hastings Int'l & Comp. L. Rev. 149, pp. 159-160, available online at: [https://repository.uchastings.edu/cgi/viewcontent.cgi?article=1765&context=hastings\\_international\\_comparative\\_law\\_review](https://repository.uchastings.edu/cgi/viewcontent.cgi?article=1765&context=hastings_international_comparative_law_review).

317 Columbia Journalism Review, Allison Griner, 'Caught in the middle': Journalists seeking asylum often stuck in limbo', 17 August 2015, available online at: [www.cjr.org/analysis/journalists\\_seeking\\_asylum.php](http://www.cjr.org/analysis/journalists_seeking_asylum.php).

318 See United States Court of Appeals (USCA), 9th Cir., *Hussain v. INS*, Case No. 98-70454, 8 February 2000 (unpublished disposition); USCA, 3rd Cir., *United States v. Koreh*, Case No. 94-5408, 6 July 1995 and USCA, 2nd Cir., *United States v. Sokolov*, Case No. 86-6157, 24 March 1987, as cited in Edward L. Carter and Brad Clark, "'Membership in a Particular Social Group": International Journalists and U.S. Asylum Law' (2007) 12:3 Communication Law and Policy 279, available online at: <https://scholarsarchive.byu.edu/cgi/viewcontent.cgi?article=1927&context=facpub>.

perception or imputation of the journalist's political opinion, regardless of whether the journalist actually holds or manifests the opinion.<sup>319</sup>

204. There is an additional, potentially complicating factor. Some national courts have held that a connection between journalism and political opinion, even if applicable in principle, may not apply in cases where the attacker or the source of the threat is a non-State actor.<sup>320</sup> In the light of the inconsistent position taken by some national courts to '*political opinion*', the question of whether journalists at risk will meet this threshold criterion to International Protection is, therefore, very uncertain.<sup>321</sup>
205. **For reasons of:** Critical to a successful application is proof that the persecution suffered by the applicant journalist at risk is '*for reasons of*' their membership of a particular social group or their political opinion. This nexus requirement can present a further difficulty for journalists. An argument can be (and has been) made that the impugned persecution of the journalist is for the purposes of suppressing information, rather than for reasons of the journalist's membership of a particular social group or their political opinion.
206. For example, in the asylum application of Eugueni Bortnikov, a Russian journalist who claimed that he was being threatened by an anti-Semitic political organisation, the United States Ninth Circuit found that there was 'no nexus' between the applicant's political opinion and the persecutor's motivations. The Court held that the attackers were most likely to have been motivated by a desire to prevent the applicant from disseminating the particular contents of a videotape.<sup>322</sup>
207. **The persecution threshold:** Journalists may face additional obstacles meeting the evidential threshold for persecution. For some journalists at risk, the acts of persecution might only be experienced on a transient or intermittent basis, putting into question whether, as a matter of fact, the '*well-founded fear of persecution*' standard has been met. For other journalists it may be the type of persecution cited that puts them in evidential difficulties. For example, it could be argued that the existence of online harassment alone<sup>323</sup> might not *per se* meet the threshold of a '*well-founded fear of persecution*' but could, when combined with other factors, such as that harassment's propensity to precipitate physical violence, mean that the journalist is deemed to require protection.
208. **Complementary protection and State discretion:** While some of these impediments may be addressed by complementary forms of International Protection (i.e. not under the Refugee Convention), these wider forms of protection are not recognised by all States and, in any event, the actual criteria adopted by States to delineate the scope of complementary protection in their jurisdictions vary significantly and can be unduly discretionary.
209. Given the increasing numbers of journalists at risk, protection systems based on the exercise of wide discretionary powers are not going to serve as appropriate or effective pathways to actual recourse.

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319 See USCA, 9th Cir., *Hussain v. INS*, Case No. 98-70454, 8 February 2000 (unpublished disposition) as cited in Edward L. Carter and Brad Clark, "'Membership in a Particular Social Group": International Journalists and U.S. Asylum Law', (2007) 12:3 Communication Law and Policy 279, available online at: <https://scholarsarchive.byu.edu/cgi/viewcontent.cgi?article=1927&context=facpub>; see also High Court of Australia, *MIEA v Guo*, Case No. S151 1996, 13 June 1997, available online at: [www.refworld.org/cases,AUS\\_HC,3ae6b703c.html](http://www.refworld.org/cases,AUS_HC,3ae6b703c.html).

320 Katy Mann, 'Reporters as Refugees: Applying United States Asylum Laws to Persecuted Journalists in Mexico', (2012) 35 *Hastings Int'l & Comp. L. Rev.* 149, p. 161, available online at: [https://repository.uchastings.edu/cgi/viewcontent.cgi?article=1765&context=hastings\\_international\\_comparative\\_law\\_review](https://repository.uchastings.edu/cgi/viewcontent.cgi?article=1765&context=hastings_international_comparative_law_review).

321 See, for example, Katy Mann, 'Reporters as Refugees: Applying United States Asylum Laws to Persecuted Journalists in Mexico', (2012) 35 *Hastings Int'l & Comp. L. Rev.* 149, pp. 159-160, available online at: [https://repository.uchastings.edu/cgi/viewcontent.cgi?article=1765&context=hastings\\_international\\_comparative\\_law\\_review](https://repository.uchastings.edu/cgi/viewcontent.cgi?article=1765&context=hastings_international_comparative_law_review); see also, the case of a Sierra Leone journalist whose asylum case was initially rejected by an immigration judge and the Board of Immigration Appeals (BIA) in the United States because his call to abolish female genital mutilation in a newspaper article was not held to constitute a 'political opinion': The Monitor, Erin Sheridan, 'Journalist's asylum case granted closer look', 5 January 2020, available online at: [www.themonitor.com/2020/01/05/journalists-asylum-case-granted-closer-look](http://www.themonitor.com/2020/01/05/journalists-asylum-case-granted-closer-look).

322 USCA 9th Cir., *Bortnikov v. INS*, 2003, 288-289, as cited in Katy Mann, 'Reporters as Refugees: Applying United States Asylum Laws to Persecuted Journalists in Mexico', (2012) 35 *Hastings Int'l & Comp. L. Rev.* 149, available online at: [https://repository.uchastings.edu/cgi/viewcontent.cgi?article=1765&context=hastings\\_international\\_comparative\\_law\\_review](https://repository.uchastings.edu/cgi/viewcontent.cgi?article=1765&context=hastings_international_comparative_law_review).

323 See **Circumstances making relocation necessary for a journalist: the 'risk'**, in particular **C. Novel forms of harassing journalists** from §49.

210. **UNHCR resettlement:** For those journalists at risk that *do* meet the relevant legal and evidential thresholds for protection standards and seek protection through resettlement, resettlement is still not guaranteed, expeditious resettlement even less so. Few States currently participate in the UNHCR resettlement programmes, with Australia, Canada, Germany, Scandinavian countries, the United Kingdom and the United States accepting the majority of resettlements.<sup>324</sup>
211. According to the UNHCR's own statistics, at the end of 2019 there were 20.4 million refugees of concern around the world, but only less than one per cent of that figure are resettled each year.<sup>325</sup> In 2019 alone, the UNHCR submitted 81,600 files for consideration for resettlement.<sup>326</sup> Due to the high volume of submissions, journalists at risk (those able to leave their home State) might have to wait several years for possible resettlement in a third country.<sup>327</sup> Given the inevitably lengthy process, resettlement under the UNHCR mandate is, therefore, not a practical option for most journalists at risk.
212. Finally, it is of concern that many States do not have an effective visa system in place to address situations in which a need for a mass relocation of journalists arises.<sup>328</sup> Circumstances may arise, as did with the **Daraa Journalists (Case study XIV)**, in which an international or internal armed conflict or change in regime results in a sudden targeting of journalists. CPJ has noted to the author of this Report that they and their partners have assisted journalists who found themselves in this sort of situation in Burundi (2015), Ethiopia (2009), Iran (2009) and in Syria (2018-present).

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324 UNHCR, 'Resettlement', last accessed October 2020, available online at: [www.unhcr.org/resettlement.html](http://www.unhcr.org/resettlement.html).

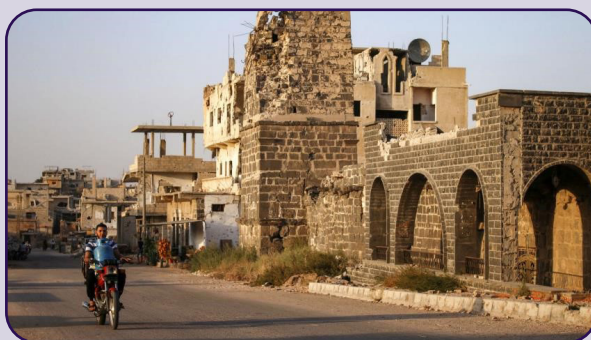
325 UNHCR, 'Resettlement', last accessed October 2020, available online at: [www.unhcr.org/resettlement.html](http://www.unhcr.org/resettlement.html).

326 UNHCR, 'Resettlement', last accessed October 2020, available online at: [www.unhcr.org/uk/resettlement.html](http://www.unhcr.org/uk/resettlement.html).

327 RSF, 'Guidelines for Exiled Journalists', June 2009, available online at: <https://rsf.org/en/news/reporters-without-borders-publishes-first-guide-exiled-journalists>.

328 See also discussion in International Bar Association, 'A Model Instrument for an Emergency Evacuation Visa', 2019, p. 68, available online at: [www.ibanet.org/Document/Default.aspx?DocumentUid=bd13bef4-6a29-414f-8d65-e2ddb7c695df](http://www.ibanet.org/Document/Default.aspx?DocumentUid=bd13bef4-6a29-414f-8d65-e2ddb7c695df).

## Case study XIV: Mass evacuation of journalists from Daraa, Syria



- In July 2018, the Syrian Journalists Association reported scores of journalists trapped in the city of Daraa Al Balad in southern Syria amid an escalation in violence. There was a concern that the journalists were in danger of being arrested, tortured or even killed because of their work. As Syrian and Russian troops approached the city of Daraa, CPJ and RSF, working with partner organisations, led an extensive international effort to evacuate this group of displaced journalists at risk.
- Working closely with the United Nations, CPJ and RSF were successful in coordinating with officials from several States, including Germany, France and Spain, to relocate more than two dozen journalists and their families to safety. This was an unprecedented year-long effort requiring considerable resources from these non-profit, non-governmental organisations.
- CPJ and RSF lobbied dozens of State governments around the world to open their borders to permit these journalists temporary or permanent relocation, and pressed UN officials to help identify and persuade potential hosts for the group. They collaborated with the Syrian Center for Media and Freedom of Expression to gather the detailed information about the journalists and their families needed for the security checks undertaken by possible relocation States.
- CPJ observed that government responses to this effort were mixed and at times contradictory, and the lack of coordination meant that it was the NGOs that were, at times, responsible for ensuring that individual States and the UN were communicating effectively. Despite several good faith efforts from diplomats, the evacuation was delayed multiple times and, in the case of one potential regional host State that had approved the evacuation politically, it was halted by their security vetting apparatus.

Sources: Information provided to the Author of the Report by CPJ on 18 February 2020; see also Anadolu Agency, '270 journalists trapped in Syria's Daraa', 10 July 2018, available online at: [www.aa.com.tr/en/middle-east/270-journalists-trapped-in-syria-s-daraa/1199688](http://www.aa.com.tr/en/middle-east/270-journalists-trapped-in-syria-s-daraa/1199688).

## E. Diplomatic Asylum

### i. The current system

213. Diplomatic Asylum refers to the practice of a State granting asylum to a person at its diplomatic missions, its consulates, on board its ships in the territorial waters of another State (naval asylum), on board its aircrafts or at its military and para-military installations in a foreign territory.<sup>329</sup>
214. Journalists at risk who are in their home State, or in third countries, might have recourse to seek Diplomatic Asylum at foreign embassies or consulates as a means of protection against persecution. In practice, this would likely mean that the journalist would reside within the embassy or consulate for the duration of the period of protection or until they were provided with a more permanent form of protection.<sup>330</sup>
215. Diplomatic Asylum has a long history in certain Latin American States and a series of treaties<sup>331</sup> were concluded in the 20th century between those countries, establishing rules for the exercise of the right. For instance, the Convention on Diplomatic Asylum signed in Caracas in 1954 provides in its Article I that:
- Asylum granted in legations, war vessels, and military camps or aircraft, to persons being sought for political reasons or for political offenses shall be respected by the territorial State In accordance with the provisions of this Convention. For the purposes of this Convention, a legation is any seat of a regular diplomatic mission, the residence of chiefs of mission, and the premises provided by them for the dwelling places of asylees when the number of the latter exceeds the normal capacity of the buildings...*
216. In the *Asylum Case*<sup>332</sup> between Colombia and Peru, the International Court of Justice recognised that a State may under certain circumstances grant Diplomatic Asylum, particularly if *'in the guise of justice, arbitrary action is substituted for the rule of law,'*<sup>333</sup> but held that Colombia, as the State granting Diplomatic Asylum in its Embassy in Lima, Peru, was not entitled to unilaterally characterise an offence committed by a person seeking Diplomatic Asylum as a political or common crime in a manner that would be binding on the host State. The Court also held that the host State was not bound to afford the person seeking Diplomatic Asylum any guarantees to enable them to leave the country in safety.<sup>334</sup>
217. Under general international law, however, Diplomatic Asylum is regarded, as explained by the authors of *Satow's Diplomatic Practice*,<sup>335</sup> as a matter of humanitarian practice rather than strict legal right, and it is accepted that it may be accorded only for the purpose of saving life or preventing injury in the face of an immediate threat to the refugee. Importantly, the right is exercised, and belongs to, the sheltering State, and not the 'refugee'.<sup>336</sup>

329 See generally Joanne Foakes and Eileen Denza, 'Privileges and Immunities of Diplomatic Missions', in Sir Ivor Roberts (Ed.), *Satow's Diplomatic Practice*, 7<sup>th</sup> Ed., Oxford University Press: 2017, pp. 233-237.

330 For example, in 2012 the Canadian embassy in Ukraine offered shelter to anti-government protesters (some but not all of whom were Canadian) for approximately a week. Switzerland sheltered Emin Huseynov, an Azerbaijani journalist who feared reprisals in Azerbaijan following political persecution: see Amal Clooney, 'Human Rights', in Sir Ivor Roberts (Ed.), *Satow's Diplomatic Practice*, Oxford University Press: 2017, pp. 331-332.

331 'Convention on Asylum', signed in Havana, 20 February 1928, at the Sixth International Conference of American States, entry into force: 21 May 1929, OAS Treaty Series No. 34 OEA/Ser.XI.; 'Convention on Diplomatic Asylum', signed in Caracas, 28 March 1954, at the Tenth Inter-American Conference, entry into force: 29 December 1954, OAS Treaty Series No. 18; see also 'the earlier 'Treaty on International Penal Law', adopted in Montevideo, 23 January 1889, by the First South American Congress on Private International Law, OAS Treaty Series No. 34, OEA/Ser.X/7, p. 1.

332 [1950] ICJ Reports 266.

333 [1950] ICJ Reports 266, at 284.

334 [1950] ICJ Reports 266, at 279 and 287-288; see also the subsequent proceedings in *Haya de la Torre (Colombia v. Peru)* [1951] ICJ Reports 71.

335 Joanne Foakes and Eileen Denza, 'Privileges and Immunities of Diplomatic Missions', in Sir Ivor Roberts (Ed.), *Satow's Diplomatic Practice*, 7<sup>th</sup> Ed., Oxford University Press: 2017, p. 234.

336 See *R. (on the application of 'B' and others) v. Secretary of State for the Foreign and Commonwealth Office* [2004] EWCA Civ 1344. In this context, the person seeking this form of asylum would not necessarily need to come within the definition of 'refugee' in the Refugee Convention.



**ii. The key impediments within the current system: Diplomatic Asylum**

- Not widely recognised amongst States;
- Even where recognised, the right is exercised, and belongs to, the sheltering State and not the 'refugee'; and
- Journalists would need to reside within the sheltering State's embassy or consulate.

218. The legal basis for the species of asylum which a State grants to an individual in its embassy or legation remains controversial. While the practice has a long history in certain Latin American countries, most States do *not* offer this pathway to protection, and, even in the context of the States that do, it is generally the *State's* right to exercise, and in exceptional circumstances.

219. On a practical level, even where a State has decided to grant Diplomatic Asylum, the journalist would need to reside within a State's embassy or consulate, possibly for an extended period of time, as in the case of **Julian Assange (Case study XV)**. Ultimately, Diplomatic Asylum, even where available, is unlikely to serve as a viable pathway to safety for most journalists who find themselves at risk and in need of protection.

## Case study XV: Julian Assange given Diplomatic Asylum by Ecuador in London



- In 2010, WikiLeaks and its co-founder, Julian Assange came to international attention after publication of hundreds of thousands of secret US military and diplomatic documents. In August 2010, the Swedish Prosecutor's Office issued an international arrest warrant for Mr. Assange relating to sexual assault charges. In December 2010, Mr. Assange was arrested in London and granted bail.
- In May 2012, the UK Supreme Court ordered that Mr. Assange be extradited to Sweden. In June 2012, Mr. Assange breached his bail conditions and took refuge in the Ecuadorian embassy in London and requested asylum. Ecuador granted Mr. Assange Diplomatic Asylum on grounds of political persecution (on the basis that there was a threat of him being eventually deported to the United States).
- In 2015, the UN Working Group on Arbitrary Detention found that Mr. Assange had been unlawfully detained by the Governments of Sweden and the UK.
- In 2019, Swedish prosecutors dropped their criminal complaints against Mr. Assange and Ecuador rescinded its asylum, citing Mr. Assange's '*discourteous and aggressive behavior*'. Mr. Assange was then arrested in London (for breach of his bail) and is currently being held in HM Prison Belmarsh.
- In May 2019, Mr. Assange was charged with several counts of violating the United States Espionage Act 1917, and his extradition to the United States is currently before the English Court, with judgment expected in early 2021.

Sources: EJIL: Talk!, Kai Ambos, 'Diplomatic Asylum for Julian Assange?', 11 September 2012, available online at: [www.ejiltalk.org/diplomatic-asylum-for-julian-assange](http://www.ejiltalk.org/diplomatic-asylum-for-julian-assange); UN OHCHR, 'The Working Group on Arbitrary Detention Deems the deprivation of liberty of Mr. Julian Assange as arbitrary', 5 February 2016, available online at: [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=17012&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=17012&LangID=E); The Washington Post, 'Wikileaks Julian Assange evicted from Ecuador embassy in London', 11 April 2019, available online at: [www.washingtonpost.com/world/europe/wikileaks-julian-assange-evicted-from-ecuador-embassy-in-london/2019/04/11/1bd87b58-8f5f-11e8-ae59-01880eac5f1d\\_story.html](http://www.washingtonpost.com/world/europe/wikileaks-julian-assange-evicted-from-ecuador-embassy-in-london/2019/04/11/1bd87b58-8f5f-11e8-ae59-01880eac5f1d_story.html); The Washington Post, 'Wikileaks founder Julian Assange charged with violating Espionage Act', 23 May 2019, available online at: [www.washingtonpost.com/local/legal-issues/wikileaks-founder-julian-assange-charged-with-violating-espionage-act/2019/05/23/42a2c6cc-7d6a-11e9-a5b3-34f3edf1351e\\_story.html](http://www.washingtonpost.com/local/legal-issues/wikileaks-founder-julian-assange-charged-with-violating-espionage-act/2019/05/23/42a2c6cc-7d6a-11e9-a5b3-34f3edf1351e_story.html); BBC News, 'Julian Assange: A timeline of Wikileaks founder's case', 19 November 2019, available online at: [www.bbc.com/news/world-europe-11949341](http://www.bbc.com/news/world-europe-11949341); AP, 'Timeline of Julian Assange's legal battles over past decade', 7 September 2020, available online at: <https://apnews.com/article/bac3f61f52a5d234e261280fc7ed2ed2>; Al Jazeera, 'Julian Assange Extradition Verdict to be Delivered on January 4', 2 October 2020, available online at: [www.aljazeera.com/news/2020/10/2/trial-of-julian-assange](http://www.aljazeera.com/news/2020/10/2/trial-of-julian-assange).

## F. The current pathways: some common obstacles and challenges

- Lengthy, complex procedures and overcrowded systems that do not adequately account for the time-sensitive nature of journalists' need for protection;
- Character and security assessments may delay, or preclude, the grant of otherwise viable visas, simply because a journalist has been investigated or prosecuted for their work;
- Lack of support for journalists wishing to continue journalistic activity upon relocation; and
- Home countries may still target journalists after relocation.

220. There are today a number of formidable practical and legal obstacles in place for journalists who are left with no choice but to seek safe refuge abroad in the face of a threat at home.
221. Each of the existing potential pathways to safety carries several practical difficulties for the journalists at risk who may seek to access them. Salient amongst these is the fact that each of these systems is already overwhelmed with applications, are complex and almost invariably too slow. There is a great discrepancy between the number of people in need of protection and the availability of protection visas. This issue is further compounded where the individual seeks to relocate with members of their family or attempts family reunification at a later stage.
222. What follows is a brief summary of some of the obstacles that are common to most of the existing pathways to safety for journalists at risk.

### *i. The often-urgent need for protection*

223. As this Report has shown, journalists facing persecution for their work are generally in need of urgent protection. This can be for a variety of reasons, including because:<sup>337</sup>
- i. they are facing threats of, or have experienced, imminent physical violence;
  - ii. the online and/or offline harassment they have experienced is likely to lead to imminent physical violence;
  - iii. they are potential subjects of imminent kidnapping and/or enforced disappearances; and/or
  - iv. they may be subject to a criminal investigation or charges for their work.
224. Each of the existing pathways to safety – with the possible exception of certain, rarely available, temporary humanitarian visas – entails a lengthy application and approval process.<sup>338</sup> Given the time sensitivity for a journalist at risk faced with the above circumstances, by the time a refugee visa, a work permit or a study permit is obtained, there is a substantial risk that the journalist has already experienced serious harm and/or is no longer in a position to be able to travel to safety.

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<sup>337</sup> See **Circumstances making relocation necessary for a journalist: the 'risk'** from §36.

<sup>338</sup> While some countries offer expedited processing options, this generally requires payment of additional fees which can be prohibitive. See, for example, the UK's priority and super priority services: Gov.UK, 'Home Office immigration and nationality fees 6 April 2018', updated 22 October 2020, available online at: [www.gov.uk/government/publications/visa-regulations-revised-table/home-office-immigration-and-nationality-fees-2018](http://www.gov.uk/government/publications/visa-regulations-revised-table/home-office-immigration-and-nationality-fees-2018). The issue of costs aside, this sort of processing is not ordinarily well-suited for the determination of the sort of sensitive or complex applications often made by journalists at risk.

## ii. *Issues of character and security raised by the criminalisation of journalism*

225. In order to be eligible for most visas, most States prescribe 'character' and 'security' requirements that must be met. The assessment of these criteria by national authorities can raise particular issues for journalists at risk, particularly those who have been investigated or prosecuted for their work.

- i. **Character:** National legislation often imposes the requirement of '*good character*'.<sup>339</sup> To determine whether a person satisfies this requirement, States will often consider whether or not a person has been charged or convicted with any crime.<sup>340</sup> But, of course, the use of the criminal justice system to threaten and silence journalists is increasingly prevalent and a common form of persecution.<sup>341</sup> The fact that a journalist may have been investigated, charged, or convicted of a political crime in their home State could well pose an obstacle to them obtaining a visa in a foreign State.<sup>342</sup> Sometimes, the existence of that factor alone will lead to a suspension or stay of the visa application, pending the outcome of the criminal investigation or proceedings. That can take years and result in a journalist's conviction (sometimes making travel practically impossible). At other times, the fact of an investigation or set of proceedings will lead to an (unchallengeable) outright visa denial.
- ii. **Security:** Most States also conduct some form of security assessment to determine whether a prospective entrant to the country poses a national security risk. In the United States, for example, a national security concern is said to exist when '*a person or organization has been determined to have a link to past, current, or planned involvement in an activity or organization involved in terrorism, espionage, sabotage, or the illegal transfer of goods, technology, or sensitive information*'.<sup>343</sup> Again, this can lead to real challenges for journalists at risk for reasons materially identical to the ones that apply to assessments of 'character': journalists are increasingly and illegitimately targeted by their home States as being members of, or participating in the activities of, terrorist or extremist organisations. The use of Interpol Red Notices, as in the cases of **Patricia Poleo (Case study VII)**<sup>344</sup> and **Can Dündar (Case study II)**,<sup>345</sup> may raise additional character and security concerns for journalists attempting to travel to a third country.

## iii. *Issues of integration and continued work*

226. For those journalists fortunate enough to succeed in relocating, difficulties may still arise regarding integration and the inability to continue work in their trained profession. Research by CPJ has found that only 17 per cent of journalists in exile continue working as journalists in their new countries of residence,

339 See, for example, the Migration Act 1958 of Australia, Section 501; see also UK Home Office, 'Nationality: good character requirement', 14 January 2019, available online at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/770960/good-character-guidance.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/770960/good-character-guidance.pdf); and Government of Canada, 'Reasons you may be inadmissible to Canada', last accessed October 2020, available online at: [www.canada.ca/en/immigration-refugees-citizenship/services/immigrate-canada/inadmissibility/reasons.html](http://www.canada.ca/en/immigration-refugees-citizenship/services/immigrate-canada/inadmissibility/reasons.html).

340 See, for example, Australian Government Department of Immigration and Border Protection, 'Personal particulars for assessment including character assessment (Form 80)', last accessed October 2020, Question 36, available online at: <https://immi.homeaffairs.gov.au/form-listing/forms/80.pdf>.

341 See **Circumstances making relocation necessary for a journalist: the 'risk'**, in particular **A. Criminalisation of journalistic activity** from §40.

342 Note that the Refugee Convention provides in its Article 1F: '*The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that: (a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes; (b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee; (c) he has been guilty of acts contrary to the purposes and principles of the United Nations.*' (Emphasis added.) Increasingly, crimes such as acts of terrorism are being designated as '*non-political*', including in extradition treaties: see UNHCR, 'Note on the Exclusion Clauses EC/47/SC/CRP.29', 30 May 1997, para. 17, available online at: [www.unhcr.org/en-ie/excom/standcom/3ae68cf68/note-exclusion-clauses.html](http://www.unhcr.org/en-ie/excom/standcom/3ae68cf68/note-exclusion-clauses.html).

343 See USCIS, 'Policy Manual - Chapter 6 - Adjudicative Review', last accessed October 2020, available online at: [www.uscis.gov/policy-manual/volume-7-part-a-chapter-6](http://www.uscis.gov/policy-manual/volume-7-part-a-chapter-6). This relates to applications for the adjustment of status. See also the Immigration and Nationality Act, section 212(a)(3) (8 U.S.C. §1182).

344 See **Case study VII (Poleo)** at p. 34.

345 See **Case study II (Dündar)** at p. 21.

indicating that even if a journalist can find refuge in a third country, they are likely to struggle to continue work in their professions and might experience resulting socio-economic problems.<sup>346</sup> As can be seen by the case of **Fatima Tlisova (Case study XIII)**,<sup>347</sup> without the assistance of non-governmental organisations, journalists may simply be unable to resume their work.

*iv. INTERPOL notices, extradition requests, and other home State measures following relocation*

227. States that choose to persecute journalists very rarely confine their efforts to their own borders. Journalists who have relocated can find themselves subject to a range of measures from the revocation of, or the refusal to renew, their passports,<sup>348</sup> all the way through to the issuance of extradition requests<sup>349</sup> or INTERPOL Red Notices.<sup>350</sup> In addition, even journalists who have successfully relocated may find that their families become the subjects of reprisals in the home State.<sup>351</sup>

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346 CPJ, 'Syria tops survey of journalists fleeing into exile', 17 June 2015, available online at: <https://cpj.org/2015/06/syria-tops-survey-of-journalists-fleeing-into-exil>.

347 See **Case study XIII (Tlisova)** at p. 72.

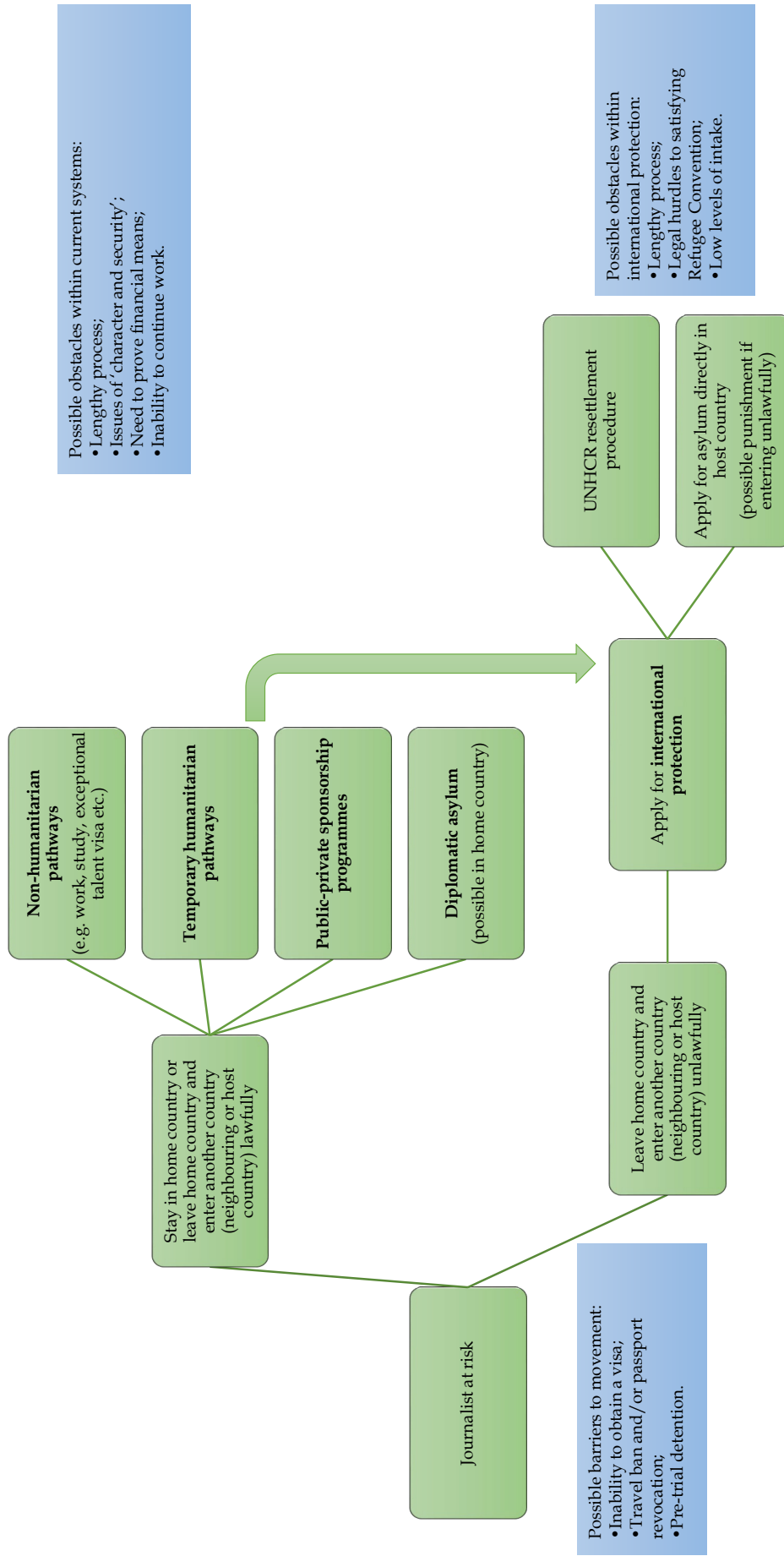
348 See **Circumstances making relocation necessary for a journalist: the 'risk'**, in particular **D. Travel bans and the revocation of travel documents** from §53 and **Case study II (Dündar)** at p. 21.

349 See **Circumstances making relocation necessary for a journalist: the 'risk'**, in particular **E. Post-relocation threats: abuse of international law enforcement and extradition procedures** from §63, **Case study II (Dündar)** at p. 21 and **Case study XV (Assange)** at p. 80.

350 See **Circumstances making relocation necessary for a journalist: the 'risk'**, in particular **E. Post-relocation threats: abuse of international law enforcement and extradition procedures** from §56, **Case study II (Dündar)** at p. 21 and **Case study VII (Poleo)** at p. 34.

351 See **Circumstances making relocation necessary for a journalist: the 'risk'**, in particular **G. Persecution of family members/dependents** at §70 and **Case study IX (Bakhtiyar)** at p. 38.

Figure 4: Summary of the existing framework: potential pathways to relocation for journalists at risk



## Key conclusions: few pathways and many obstacles to safety for journalists at risk

228. **The need for effective pathways to safety:**<sup>352</sup> Today's journalists face the possibility of several forms of persecution including threats, online and offline harassment, politically motivated criminal charges and physical violence. Such circumstances may leave a journalist with no choice but to seek relocation to another country, at least while the threat to their safety persists.
229. For the majority of journalists, it is a priority to be able to return to their home country in order to continue their journalistic work, once any immediate threat has subsided. The ability to temporarily relocate is, therefore, critical for journalists to achieve their ultimate aim of being able to continue working in their field and region safely.
230. **Non-Humanitarian Pathways:**<sup>353</sup> Non-Humanitarian Pathways such as visas for study, teaching, or working abroad, offer – *in principle* – a viable route out of a journalist's home State. This pathway also carries the advantage of offering journalists at risk the opportunity to continue their journalistic work, in one form or another, while the threat to their safety in their home State subsides. Several NGOs run specific fellowship or scholarship programmes for journalists, to facilitate the relocation of journalists while assisting them to continue to work or study in their field.
231. In practice, however, this pathway contains numerous practical hurdles for journalists at risk.<sup>354</sup> These visa options often involve a drawn out and complex application process. A journalist must first secure an offer of work, or a position at an academic institution (alternatively, an inter-company or foreign bureau transfer), before commencing the application process for a suitable visa. This generally requires preparedness on behalf of a journalist months, if not years, prior to any programme or employment commencement date. Even after securing such a position, the visa application processing time can be very lengthy. Journalists at risk do not have the luxury of time and cannot afford this long wait.
232. Journalists at risk may also encounter socio-economic and other practical barriers. Those who do not speak a foreign language may be unable to enrol in a course and those who do not have the benefit of scholarships, or support from fellowship schemes, are unlikely to have the financial means necessary to pursue study options. Journalists may also struggle to find an employer that is willing to undertake the administrative burden and incur the expense of assisting with their immigration applications. Special ability or talent visas, where available, have exceptionally onerous threshold criteria for journalists, making their grant extremely unlikely.
233. Sometimes it is the persecuting act itself that will serve to thwart the journalist's efforts to secure a non-humanitarian visa. For instance, the fact that a journalist is the subject of a criminal investigation or prosecution in their home country will usually constitute a relevant factor in the assessment of their 'good character' for the purposes of their visa application. Sometimes, the existence of that factor alone will lead to a suspension or stay of the visa application, pending the outcome of the criminal investigation or proceedings. That can take years and result in a journalist's conviction (sometimes making travel practically impossible). At other times, the fact of an investigation or set of proceedings will lead to an (unchallengeable) outright visa denial.
234. **Temporary Humanitarian Pathways:**<sup>355</sup> Certain temporary humanitarian visas can, in principle, provide journalists at risk with a pathway to safe and timely relocation. States that offer these types of pathways include the United States and a handful of other countries, including Germany, Norway and Switzerland.

352 See **The critical importance of the issue today** from §29; see also **Circumstances making relocation necessary for a journalist: the 'risk'** from §36.

353 See **A. Non-Humanitarian Pathways** from §78.

354 See **The key impediments within the current system: Non-Humanitarian Pathways** from §95.

355 See **B. Temporary Humanitarian Pathways: The Short-Term/Humanitarian Visa** from §101.

235. However, by and large, this category of visa is *not* commonly available, or at least not in the form that would be effective for journalists at risk. Even amongst those few States that do offer this type of visa, the number of persons who are granted it are low and, while this pathway can be more expeditious and less costly than some of the alternatives, some States require applicants to provide evidence of financial sponsorship or sufficient funds, a condition that is often very difficult for journalists to fulfil, especially in the face of a fast-evolving threat.<sup>356</sup>
236. **Public-Private Sponsorship Programmes:**<sup>357</sup> Private or community sponsorship on humanitarian grounds is offered by a scattering of States, including Australia, Canada, Ireland, New Zealand, Spain and the UK. There is, at present, a marked difference in the scope and effectiveness of such programmes amongst the few States that offer them. The majority of these schemes form part of the relevant State's refugee resettlement processes.
237. However, the application procedure for private or community sponsorship is very lengthy (measured in years, rather than weeks or months) and often complex. Journalists must generally have the luxury of time and sometimes the means necessary to find sponsors who are willing, and able, to take on the considerable administrative and financial burdens of sponsorship. Neither luxury is generally available to journalists facing threats to their safety.<sup>358</sup>
238. **International Protection:**<sup>359</sup> International Protection is the most comprehensive global system for resettlement and relocation available, based as it is on the fundamental principle of international law that States must not return a person to a country where that person has reason to fear persecution. However, the system, as it presently operates, offers limited recourse to most journalists at risk.<sup>360</sup>
239. Applications for asylum and the identification of refugees for resettlement ordinarily require applicants to be outside of their country of origin. If journalists cannot leave their home countries and enter other countries, then it becomes very difficult, if not impossible, for them to make ordinary asylum applications.
240. Even journalists who can travel and are, therefore, able to make an International Protection claim are often faced with the reality that 'International Protection' may in fact offer them no real protection at all. Some problems encountered by journalists here are as follows:
- In making a claim for protection under the Refugee Convention, applicants must show a well-founded fear of being persecuted in their home country for one of five enumerated reasons.<sup>361</sup> For journalists, the most relevant and applicable two reasons for persecution are '*membership of a particular social group*' and '*political opinion*'.
  - Certain States will, however, only recognise '*membership of a particular social group*' where there is an innate, fundamental or '*immutable characteristic*' that is common amongst its members. In turn, journalists who make claims on this basis may fail simply on the basis that their occupation, as journalists, is capable of change and therefore not an '*immutable characteristic*'.<sup>362</sup>
  - Proceeding on the alternative basis of making a claim of persecution '*for reasons of...political opinion*' is no more straightforward. The law on the issue of whether a journalist has a '*political opinion*' or

356 See generally, **The key impediments within the current system: Temporary Humanitarian Pathways** from [§134](#).

357 See **C. Public-Private Sponsorship Programmes** from [§136](#).

358 See generally **The key impediments within the current system: Public-Private Sponsorship Programmes** from [§148](#).

359 See **D. International Protection** from [§151](#).

360 See **The key impediments within the current system: International Protection** from [§194](#).

361 The five enumerated grounds listed in Article 1 of the Refugee Convention are race, religion, nationality and membership of a particular social group or political opinion.

362 See **The key impediments within the current system: International Protection** at [§199](#).



should be considered '*non-partisan*' is inconsistent across, and sometimes within, different States.<sup>363</sup> The result is that journalists who seek protection on this ground may find their claims rejected for failing to meet this threshold requirement.

- Non-Refugee Convention protections, such as complementary protection,<sup>364</sup> which may better account for the needs of journalists,<sup>365</sup> are not recognised by all States and, in any event, the actual criteria adopted by States to delineate the scope of complementary protection in their jurisdictions vary significantly.<sup>366</sup>
- Furthermore, only a minority of States currently participate in the UNHCR resettlement programmes, meaning that the level of acceptance of refugees through this system is generally low and journalists, like others applying for refugee resettlement, therefore face excessive wait times.

241. **Diplomatic Asylum:**<sup>367</sup> The legal basis for the species of asylum that a State grants to an individual in its embassy or legation remains controversial. While the practice has a long history in certain Latin American countries, most States do *not* offer this pathway to protection. Even where some form of Diplomatic Asylum is recognised by a State, the discretion to grant asylum itself may in fact be limited by a number of factors. On a more practical level, even a successful application would likely require the journalist to reside within a State's embassy or consulate, meaning that this pathway is not in fact a viable remedy for most journalists who are at risk for an extended period of time.<sup>368</sup>

242. **Obstacles common to the pathways:**<sup>369</sup> There are significant general obstacles to securing relocation and remaining safe for journalists at risk:

- *Delay:*<sup>370</sup> Many of the pathways currently available to journalists in principle are, in practice, overcrowded and involve lengthy and complex processes that do not account for the time-sensitive nature of journalists' needs for protection.
- *Criminalisation of journalistic activity:*<sup>371</sup> Journalists who are subject to criminal investigation or proceedings at home, may be delayed in, or precluded from, obtaining visas due to character and security concerns raised by the host State. This can be so even in the clearest cases of politically motivated prosecutions.
- *Inability to resume journalistic activity:*<sup>372</sup> For the fortunate few journalists who are able to successfully relocate, only 17 per cent of journalists in exile have been reported as being able to continue journalistic activity in their new countries of residence.
- *Post-relocation threats and issues:*<sup>373</sup> States that choose to persecute journalists very rarely confine their efforts to their own borders. Those journalists who have relocated may be subject to a range of

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363 See **The key impediments within the current system: International Protection** at [§201](#).

364 Complementary protection is not a term defined in any international instrument. It is, rather, a phrase that has emerged over the course of the past couple of decades as a description of the practice adopted by some States of providing relief from removal or deportation to asylum applicants who have failed in their claim for refugee status under the Refugee Convention. Other terms used to refer to the same practice are, for example, '*subsidiary protection*', '*temporary asylum*', or '*humanitarian protection*'; see generally **D. International Protection** from [§160](#).

365 I.e. because there would be no requirement to make the direct connection between the persecution the journalist faces and one of the Refugee Convention grounds.

366 See **D. International Protection** from [§160](#) and **The key impediments within the current system: International Protection** from [§194](#).

367 See **E. Diplomatic Asylum** from [§213](#).

368 See **The key impediments within the current system: Diplomatic Asylum** from [§218](#).

369 See **F. The current pathways: some common obstacles and challenges** from [§220](#).

370 See **F. The current pathways: some common obstacles and challenges** from [§223](#).

371 See **F. The current pathways: some common obstacles and challenges** from [§225](#).

372 See **F. The current pathways: some common obstacles and challenges** at [§226](#).

373 See **F. The current pathways: some common obstacles and challenges** at [§227](#).

retaliatory measures by their home State: everything from the revocation of, or the refusal to renew, their passports, all the way through to the issuance of extradition requests or INTERPOL Red Notices.

243. The findings in this Report show that there are, today, a number of formidable practical and legal obstacles facing journalists at risk who are left with no choice but to seek safe refuge abroad in the face of a threat at home. And, at present, it is almost exclusively *non*-governmental organisations that bear the tremendous burden of providing essential financial, administrative, and logistical assistance to journalists in their quest for safety. There is, however, only so much they can do, especially within the present framework for protection.

# Recommendations

244. Today's journalists face varied and extensive forms of persecution that can make it necessary for them to relocate to another country.
245. While it is, therefore, neither possible nor feasible to recommend a one-size-fits-all solution for all journalists at risk, it is clear that the current pathways to safety are too few in number and that those that do exist are too slow, burdensome and difficult to navigate to be capable of providing practical and effective recourse.
246. Accordingly, this Report makes **nine recommendations** principally directed to members of the Media Freedom Coalition and their partner States committed to the protection and promotion of media freedom.

## 1. States should introduce an emergency visa for journalists at risk.

247. States should introduce a journalist-specific emergency visa: this would be the most effective (and principled) way to address the current obstacles that journalists at risk encounter with the existing immigration pathways.
248. This visa would not be dissimilar to a type of humanitarian pathway already offered by a scattering of States, such as Germany, Norway, Switzerland and the United States.<sup>374</sup> The proposed emergency visa should be granted to those journalists who present an 'arguable claim'<sup>375</sup> of exposure to a real risk of serious harm or a well-founded fear of persecution.
249. *Description of visa:* The journalist-specific emergency visa would offer a humanitarian pathway for journalists and those engaging in journalistic activity. The visa should be open to those journalists in need of immediate or urgent protection due to an ongoing threat to them and/or their families and continue to be available until the risk subsides.
250. *Visa information and applicable criteria:* States should make available to NGOs, and to the public at large, information regarding the availability of this visa category and any criteria or guidelines that the authorities will consider to determine applications for this visa type.
251. *Submission of visa application:* States should permit journalists to make an application for this category of visa – on behalf of themselves and their immediate family – in the State's embassy or consulate located within the journalist's home country.<sup>376</sup> For some journalists, travelling to, or being seen to enter, a foreign

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374 The United States permits those outside the country who are otherwise ineligible for admission to request 'parole' into the United States based on humanitarian grounds or significant public benefit reasons, for a temporary period of time: the Immigration and Nationality Act, Section 212(d)(5) (8 U.S.C. § 1182) (in conjunction with transfer of authority under the Homeland Security Act 2002) allows the Secretary of Homeland Security, subject to some exclusions, to use their discretion to parole an alien applying for admission into the United States temporarily for urgent humanitarian reasons or significant public benefit. In Germany an applicant may be granted a temporary residence permit for the purpose of admission from abroad in accordance with international law or on urgent humanitarian grounds under Section 22 of the Residence Act. In Norway a visa under Section 11 of the Immigration Act may be granted for '*humanitarian reasons, national considerations or international obligations*', for a period of up to three months, even if the applicant does not meet the Schengen requirements. For further details and examples of similar visas, see **B. Temporary Humanitarian Pathways: The Short-Term/Humanitarian Visa** from §101.

375 This would be in line with the approach put forward by the European Parliament's Research Study (supported by evidence provided by the Red Cross): '*Full assessments of the merits of International Protection claims should not be conducted extraterritorially, in light of the difficulties pertaining to providing access to dignified reception conditions, fair processing guarantees, remedies with suspensive effect, and effective judicial protection abroad.*' In the light of this, the European Parliament Research Study recommended that such visas should be granted to those submitting an 'arguable claim' of exposure to a real risk of serious harm or a well-founded fear of persecution, along the lines of European Court of Human Rights case law. See European Parliament Research Service, 'Humanitarian Visas – European Added Value Assessment accompanying the European Parliament's legislative own-initiative report', October 2018, p. 94, available online at: [www.europarl.europa.eu/RegData/etudes/STUD/2018/621823/EPRS\\_STU%282018%29621823\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2018/621823/EPRS_STU%282018%29621823_EN.pdf).

376 See the example of Switzerland which permits visa applications to be made at a Swiss diplomatic representation abroad on humanitarian grounds: State Secretariat for Migration, 'Asylum applications from abroad', 1 March 2019, available online at: [www.sem.admin.ch/sem/en/home/asyl/asylverfahren/asylgesuch/asylgesuch\\_aus\\_ausland.html](http://www.sem.admin.ch/sem/en/home/asyl/asylverfahren/asylgesuch/asylgesuch_aus_ausland.html).

consulate or embassy may in itself be unsafe. To account for these circumstances, States should also permit journalists to make secure online visa applications in exceptional circumstances.

252. *Visa processing*: In processing applications for this visa, States should:

- present the journalist with an opportunity to provide information regarding their claims and, in particular, any criminal investigation or outstanding charges that may raise character and/or security concerns. Since journalists at risk will often be under severe time pressure in making a visa application, and may not be able to put forward a complete application in the first instance, ongoing opportunities to provide information are critical;
- train, and provide sufficient resources to, diplomatic and consular personnel to ensure that decisions are made by reference to: (i) available information on general issues of freedom of expression and the press in the applicant journalist's home State; and (ii) the specific circumstances of the journalist's case in particular;
- train their decision-making teams so as to ensure the proper and fair assessment of character and security grounds that may arise, so as not to preclude or delay the grant of a visa to a journalist investigated, indicted or convicted on pretextual charges by the home country;<sup>377</sup>
- confer, where necessary, direct authority on ambassadors and/or consular teams to make decisions with respect to: (i) the grant of this visa; and (ii) any necessary steps to be undertaken by the State to ensure the safe relocation of the journalist;<sup>378</sup>
- commit to decisions being made on applications for this visa in a maximum of 15 days, or, on determination of acute urgency, 48 hours;<sup>379</sup>
- confer on ambassadors and/or consular teams the power to authorise immediate transfer, i.e. either to grant the visa on a *prima facie* basis, or to apply a visa waiver pending determination of the visa application, in cases where the journalist's life or liberty is at imminent risk; and
- if a visa application is refused, provide the journalist with an opportunity of internal review. Internal review should be undertaken *de novo*, conducted by an independent team that includes diplomatic and/or consular staff on the ground in the journalist's home State, and should have particular regard to: (i) the general state of media freedom in the home country; (ii) the nature of the particular risk to the journalist's safety; and (iii) whether the journalist has been subject to harassment, investigation, or criminal sanction, of a politically motivated nature. In finely balanced internal review cases, the processing authorities should seek an independent (and confidential) view on the journalist's case from appropriately qualified local or international counsel.

## 2. In the absence of a journalist-specific emergency visa, States should commit to the expedited processing of visa applications received from journalists who are determined to be at risk.

253. Journalists at risk require pathways to swift relocation. However, journalists currently encounter lengthy application processes for visas for which they might be eligible: i.e. conventional non-humanitarian visas

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377 Journalists may be facing criminal investigations or be subject to proceedings that are based on politically motivated charges. This can trigger adverse character and/or security assessments and delay the processing of the visa until proceedings are concluded, or indeed result in an outright visa denial. See **F. The current pathways: some common obstacles and challenges** from §225.

378 See, for example, the current practice in Spain regarding applications in embassies of third countries - Barcelona, 'Ciutat Refugi, International Protection and Asylum Seeking in Spain', last accessed October 2020, available online at: <http://ciutatrefugi.barcelona/en/international-protection-and-asylum-seeking-spain>.

379 Journalists often experience lengthy wait times for visa processing. This can mean that imminent threats eventuate, and journalists may pay the ultimate price while awaiting visa processing. See **F. The current pathways: some common obstacles and challenges** from §223.

(such as for work, study or academic/NGO fellowships),<sup>380</sup> private or community humanitarian sponsorship programmes<sup>381</sup> and/or International Protection visas.<sup>382</sup>

254. Where journalists present cogent information suggesting that they are at risk, States should undertake to provide swift processing of their visa applications, while at the same time ensuring a meaningful review that adequately addresses any issues of character and security that may arise, or any other circumstances engaging media freedom issues.<sup>383</sup>
255. States should process any such applications within a maximum of 15 days for high risk cases and 48 hours for urgent emergency cases.

**3. In the absence of a journalist-specific emergency visa, States should provide an opportunity for journalists at risk making visa applications to provide information on issues of character and security that may arise (as often do for journalists subject to criminal investigation or charges for their work), and ensure that such visa applications are assessed fairly and accurately in the light of that, and other available, information.**

256. Even where States already provide expedited visa processing, issues of character and security may delay, suspend or result in the denial of a journalist's visa application.
257. Issues of character and security generally arise where the journalist's home State has commenced a criminal investigation or brought charges on grounds that are – in fact – politically motivated.
258. States should provide journalists in this situation with an adequate opportunity to provide information on any character or security issues, as they arise, during visa processing.
259. States should then ensure that issues of character and security, when they arise, are assessed sensitively and fairly on a case-by-case basis, based on the information provided in the visa application and other information available on: (i) general issues surrounding freedom of expression and the press in the journalist's home State; and (ii) the specific circumstances of each journalist's case.
260. States should also ensure that decision-making teams are adequately trained and equipped to undertake a sensitive and fair assessment of character and security grounds, so as not to preclude or delay the grant of a visa to a journalist investigated, indicted, or convicted on pretextual charges by the journalist's home State.<sup>384</sup>
261. In finely balanced cases, or where the journalist has clearly not had the benefit of legal advice on their application, the visa processing authorities should seek an independent (and confidential) view from appropriately qualified local or international counsel.

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380 See **A. Non-Humanitarian Pathways: work permits, extraordinary talent visas, visas for study, teaching, and scholarship or fellowship programmes** from §88; **Case study X (ICORN)** at p. 45 illustrates an example of a scheme that provides an avenue for journalists to relocate to a country and continue in their field of journalism. Several other fellowship programmes exist through NGOs and other institutions. Importantly, some of these fellowship programmes face difficulty securing the necessary visas to allow journalists to relocate: see **Case study X (ICORN)** at p. 45; **The key impediments within the current system: Non-Humanitarian Pathways** from §95 and ICORN, Elisabeth Dyvik, 'Providing residencies for persecuted writers and artists in Europe – Immigration Issues', p. 51, last accessed October 2020, available online at: [www.icorn.org/sites/default/files/visa\\_and\\_residence\\_permit\\_edy.pdf](http://www.icorn.org/sites/default/files/visa_and_residence_permit_edy.pdf).

381 See discussion in **The key impediments within the current system: Public-Private Sponsorship Programmes** from §148.

382 See discussion in **The key impediments within the current system: International Protection** from §194 and see generally **F. The current pathways: some common obstacles and challenges** from §223.

383 See also Recommendation 3.

384 See **F. The current pathways: some common obstacles and challenges** from §225.

#### **4. States should commit to granting visas to immediate family members/dependents of journalists at risk who are granted visas.**

262. Family members/dependents of journalists may also experience persecution. Furthermore, persecution of family members/dependents left behind can even be exacerbated by the relocation of a journalist overseas, sometimes in an effort to persuade the journalist to return to their home State.<sup>385</sup>

263. When a journalist at risk is granted a visa, States should commit to granting visas to immediate family members and/or dependents of that journalist.

#### **5. States should issue travel documents to relocated journalists at risk if their home countries move to revoke or cancel their passports.**

264. A journalist's home State may move to revoke or cancel the passport of a journalist who has relocated. This can have immediate consequences for a journalist's immigration status and ability to travel.<sup>386</sup>

265. States should issue the journalist confronted with this situation with travel documents to mitigate the risks posed by passport revocation or cancellation.

#### **6. States should permit refugee protection visa applications to be made by journalists at risk, from within their home State.**

266. The International Protection system generally requires applicants to leave their home State before making an application for International Protection.<sup>387</sup>

267. For those journalists who are unable to leave their home country to submit their applications, States should permit visa applications from within the journalists' home State.

268. This process should provide an opportunity for journalists to:

- submit their applications at a State's embassy or consulate, or through a secure online portal; and
- attend visa interviews at a State's embassy or consulate, or – in cases of heightened risk to the journalist – through video conference.

#### **7. States should make clear in their domestic law that journalists at risk can fall within the definition of a 'refugee' for the purposes of the Refugee Convention, or otherwise qualify for International Protection.**

269. Journalists at risk considering making an application for International Protection may encounter difficulties meeting the 'refugee' definition under the Refugee Convention, depending on the jurisdiction in which they apply for protection.<sup>388</sup>

270. Under Article (1) of the Refugee Convention, a 'refugee' is defined as *'any person who...owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular*

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385 See **Circumstances making relocation necessary for a journalist: the 'risk'**, in particular **G. Persecution of family members/dependents** at §70 and **Case study IX (Bakhtiyar)** at p. 38.

386 See **Circumstances making relocation necessary for a journalist: the 'risk'**, in particular **D. Travel bans and the revocation of travel documents** from §53 and **Case study VI (Fattah)** at p. 31.

387 See **D. International Protection** at §184 and §188.

388 See **The key impediments within the current system: International Protection** from §194.

*social group or political opinion, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country...'*

271. For journalists, the most relevant and applicable two reasons for persecution are '*membership of a particular social group*' and '*political opinion*'.
272. Certain States will, however, only recognise '*membership of a particular social group*' where there is an innate, fundamental or '*immutable characteristic*' that is common amongst its members.<sup>389</sup> In turn, journalists who make claims for International Protection on this basis may fail simply because of a determination that their occupation, as journalists, is capable of change and therefore not an '*immutable characteristic*'.<sup>390</sup>
273. Proceeding on the alternative basis of making a claim of persecution '*for reasons of...political opinion*' is no more straightforward for journalists at risk. The law on the issue of whether a journalist has a '*political opinion*' or should be considered '*non-partisan*' is inconsistent across, and sometimes within, different jurisdictions.<sup>391</sup> The result is that journalists at risk who seek protection on this ground may find their claims for protection rejected for failing to meet this threshold requirement.<sup>392</sup>
274. In recognition of the clear persecution that journalists face due to their profession, States should make clear in their domestic law that journalists who are suffering persecution in their home countries can meet the threshold requirements of a 'refugee'.
275. Complementary grounds of protection such as those offered by some States, and recognised in some regional conventions,<sup>393</sup> may encompass a journalist's circumstances better than the grounds in the Refugee Convention. As an alternative to amending their current legal position on refugees, States could consider the adoption of criteria which expressly permits journalists to apply for asylum based on complementary grounds of protection.<sup>394</sup>

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389 See **The key impediments within the current system: International Protection** from §196. In more than one country, there is an understanding and/or legal precedent that recognition of 'membership of a particular social group' generally requires an innate, fundamental or 'immutable characteristic' that is common amongst its members. See, for example, United States Board of Immigration Appeals, *Matter of Acosta*, Case No. A-24159781, 1 March 1985, available online at: [www.justice.gov/sites/default/files/eoir/legacy/2012/08/14/2986.pdf](http://www.justice.gov/sites/default/files/eoir/legacy/2012/08/14/2986.pdf) as cited in UNHCR, Michelle Foster, 'The 'Ground with the Least Clarity': A Comparative Study of Jurisprudential Developments relating to 'Membership of a Particular Social Group'', August 2012, p. 6, available online at: [www.unhcr.org/protection/globalconsult/4f7d8d189/25-ground-clarity-comparative-study-jurisprudential-developments-relating.html](http://www.unhcr.org/protection/globalconsult/4f7d8d189/25-ground-clarity-comparative-study-jurisprudential-developments-relating.html). In this case, it was held that refugee law did not guarantee one's right to work in the job of one's choice.

390 See **The key impediments within the current system: International Protection** from §196. See, for example, analysis in Edward L. Carter and Brad Clark, "'Membership in a Particular Social Group": International Journalists and U.S. Asylum Law' (2007) 12:3 Communication Law and Policy 279, pp. 298-301, available online at: <https://scholarsarchive.byu.edu/cgi/viewcontent.cgi?article=1927&context=facpub>.

391 See **The key impediments within the current system: International Protection** from §201; see also Katy Mann, 'Reporters as Refugees: Applying United States Asylum Laws to Persecuted Journalists in Mexico' (2012) 35 Hastings Int'l & Comp. L. Rev. 149, p. 159, available online at: [https://repository.uchastings.edu/cgi/viewcontent.cgi?article=1765&context=hastings\\_international\\_comparative\\_law\\_review](https://repository.uchastings.edu/cgi/viewcontent.cgi?article=1765&context=hastings_international_comparative_law_review).

392 See **The key impediments within the current system: International Protection** from §201.

393 See **D. International Protection** from §160.

394 See **D. International Protection** from §160.

## 8. INTERPOL should require States seeking the issuance of a Red Notice to specify whether the subject of the notice sought is a journalist and, if it is, INTERPOL should conduct a robust Article 3 assessment regarding that individual before reaching a decision on whether or not to issue the Red Notice.

276. Article 3 of INTERPOL's constitution precludes it from undertaking activities or interventions of a political nature.<sup>395</sup> This has not prevented States from abusing INTERPOL's systems to issue politically motivated notices, including notices against journalists who have relocated from their home countries.<sup>396</sup>
277. Once a Red Notice has been issued (seeking the arrest of a person wanted by a judicial authority), INTERPOL member countries can very swiftly circulate information about wanted persons and once an alert has been disseminated, it is for each receiving member country to decide how to respond to that information.<sup>397</sup> However, the receipt alone of a Red Notice will lead to automatic arrest in a number of jurisdictions.<sup>398</sup>
278. This can mean that a journalist at risk who has managed to leave their home State might nevertheless be arrested and detained by another State's authorities, pursuant to an international law enforcement process that has been heavily criticised for lacking adequate procedural safeguards.<sup>399</sup>
279. To mitigate this risk, INTERPOL should require any member countries seeking the issuance of a Red Notice to specify whether the intended subject of the notice is a journalist.<sup>400</sup>
280. Where the intended subject of a Red Notice is determined by the member country, or INTERPOL, to be a journalist, INTERPOL should conduct a robust Article 3 assessment regarding that individual and, where necessary, ask the requesting country for further information so that INTERPOL can determine whether or not the application has been properly made, consistent with INTERPOL's constitution.<sup>401</sup>
281. These steps must necessarily be undertaken *prior* to the issuance and dissemination of any proposed Red Notice to mitigate the risk and potential harm caused to journalists at risk who are targeted by their home States for politically motivated, and therefore improper, purposes.

395 See **Circumstances making relocation necessary for a journalist: the 'risk'**, in particular **E. Post-relocation threats: abuse of international law enforcement and extradition procedures** from §56; see also INTERPOL, 'Constitution of the International Criminal Police Organization -INTERPOL' [I/CONS/GA/1956 (2017)], Article 3.

396 For examples of journalists who have been subject to a Red Notice, see **Circumstances making relocation necessary for a journalist: the 'risk'**, in particular **E. Post-relocation threats: abuse of international law enforcement and extradition procedures** from §56; see also, The New York Times, 'The Misuse of Interpol's Database', 11 November 2015, available online at: [www.nytimes.com/2015/11/11/opinion/the-misuse-of-interpols-database.html](http://www.nytimes.com/2015/11/11/opinion/the-misuse-of-interpols-database.html); see also Fair Trials, 'Defending Human Rights, Strengthening INTERPOL', last accessed October 2020, available online at: [www.fairtrials.org/wp-content/uploads/INTERPOL-Summary.pdf](http://www.fairtrials.org/wp-content/uploads/INTERPOL-Summary.pdf).

397 Fair Trials, 'Defending Human Rights, Strengthening INTERPOL', last accessed October 2020, available online at: [www.fairtrials.org/wp-content/uploads/INTERPOL-Summary.pdf](http://www.fairtrials.org/wp-content/uploads/INTERPOL-Summary.pdf).

398 According to Fair Trials, this includes or has previously included Georgia, Italy, Lebanon, Poland and Spain: Fair Trials, 'Strengthening respect for human rights, strengthening INTERPOL', November 2013, p. 13, available online at: [www.fairtrials.org/wp-content/uploads/Strengthening-respect-for-human-rights-strengthening-INTERPOL4.pdf](http://www.fairtrials.org/wp-content/uploads/Strengthening-respect-for-human-rights-strengthening-INTERPOL4.pdf).

399 See **Circumstances making relocation necessary for a journalist: the 'risk'**, in particular **E. Post-relocation threats: abuse of international law enforcement and extradition procedures** from §56.

400 INTERPOL Rules on the Processing of Data [III/IRPD/GA/2011 (2019)]: Article 83(2) currently requires information on the identity of the subject of the proposed Red Notice and judicial data. It is unclear, in the light of the recent cases, how compliant members countries have been in giving effect to Article 83(2), or how effectively this requirement has been policed by INTERPOL.

401 In assessing information in light of Article 3 of INTERPOL's Constitution, the following elements are to be considered by INTERPOL: (a) nature of the offence, namely the charges and the underlying facts; (b) status of the persons concerned; (c) identity of the source of the data; (d) position expressed by another National Central Bureau or another international entity; (e) obligations under international law; (f) implications for the neutrality of the Organization; (g) general context of the case: INTERPOL, 'Repository of Practice: Application of Article 3 of INTERPOL's Constitution in the context of the processing of information via INTERPOL's channels', February 2013, p. 8, available online at: [www.interpol.int/content/download/12626/file/article-3-ENG-february-2013.pdf?inLanguage=eng-GB](http://www.interpol.int/content/download/12626/file/article-3-ENG-february-2013.pdf?inLanguage=eng-GB). While INTERPOL notes its approach regarding 'freedom of expression offences' in its Repository of Practice, in practice States move to charge and convict journalists based on offences that on their face bear no relation to a 'freedom of expression offence'; see **Circumstances making relocation necessary for a journalist: the 'risk'**, in particular **E. Post-relocation threats: abuse of international law enforcement and extradition procedures** from §56, **Case study II (Dündar)** at p. 21 and **Case study VII (Poleo)** at p. 34.



## 9. Signatories to the Global Pledge on Media Freedom should nominate ‘regional champion’ States, for two-year terms, to spearhead efforts in the provision of safe refuge for journalists at risk.

282. Journalists may face cultural and/or linguistic barriers upon relocation which may, in turn, hinder their ability to continue their journalistic work.<sup>402</sup> For this reason it is desirable for journalists to relocate to a country, where possible, within the same region as their home State.
283. To this end, the signatories to the Global Pledge on Media Freedom should nominate one or more States in each geographic region as a ‘Regional Champion’. The Regional Champion should, amongst other things:
- commit to implementing and promoting the recommendations contained in this Report;
  - commit to attending bi-annual meetings with other Regional Champions to share its learning and to report on the progress made in implementing the recommendations contained in this Report; and
  - commit to providing signatories to the Global Pledge on Media Freedom with an Annual Report regarding its progress on implementing the recommendations contained in this Report.

## Conclusion

284. Every year, journalists must leave their countries to escape threats to their safety: threats that have only arisen because they have performed their duties – as journalists – to report the truth and to impart information of public interest.
285. However, many journalists faced with that situation are too often unable to move to safety in time because the pathways open to them are too few in number and those that do exist are too slow, burdensome and difficult to navigate to be capable of providing practical and effective recourse.
286. Affirming the importance of global media freedom in speeches is not enough. The root evil that underlies so many illegitimate abuses of media freedom is, as evinced in this Report, the ultimate threat of violence to journalists and their families: ‘If you write that, we *will* hurt you’.
287. States that believe protecting journalists and championing their work constitutes a vital pillar of a free and democratic society need to act. Introducing a new emergency visa for journalists at risk and making the essential adjustments recommended in this Report to the existing framework of safe relocation will send a clear message back: ‘If you are at risk for what you write, we *will* protect you’.

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<sup>402</sup> See, for example, discussion in **F. The current pathways: some common obstacles and challenges** at [§226](#).

## **Report on the Use of Targeted Sanctions to Protect Journalists**

13 FEBRUARY 2020

Authored by Amal Clooney, barrister and Deputy Chair the High Level Panel of Legal Experts on Media Freedom, the report has been endorsed by the High Level Panel, the [International Bar Association's Human Rights Institute](#), the Committee to Protect Journalists, Human Rights First, PEN America, Reporters without Borders, and the UN Special Rapporteur on Freedom of Expression, David Kaye. The report examines current challenges faced by journalists around the world and recommends the consistent use of targeted sanctions as a tool to enforce compliance with international human rights law, including the right to a free press. The report contains an in-depth analysis of the existing systems for targeted sanctions in the United States, the United Kingdom, Canada, and the European Union and concludes with eleven recommendations for designing and implementing global human rights sanctions regimes to better protect journalists around the world.

A copy of the report is available at:

[www.ibanet.org/Media-Freedom-Sanctions-report-launch-2020.aspx](http://www.ibanet.org/Media-Freedom-Sanctions-report-launch-2020.aspx)

## **A Pressing Concern: Protecting and Promoting Press Freedom by Strengthening Consular Support to Journalists at Risk**

16 NOVEMBER 2020

Authored by the Honourable Professor Irwin Cotler, Chair of the Raoul Wallenberg Centre for Human Rights, former Minister of Justice and Attorney-General of Canada and member of the High Level Panel of Legal Experts on Media Freedom, the report has been endorsed by the High Level Panel and the [International Bar Association's Human Rights Institute](#), Committee to Protect Journalists, Felice Gaer, Former Vice Chair United Nations Committee against Torture and Director of the Jacob Blaustein Institute for the Advancement of Human Rights, Freedom House, Human Rights Foundation, James Foley Legacy Foundation, Journalists for Human Rights, Lantos Foundation for Human Rights, PEN America, REDRESS, Reporters Without Borders, and United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Irene Khan.

This report examines the existing State approaches respecting consular assistance for journalists at risk abroad, and proposes a new paradigm of justice and accountability organised around four recommendations:

- First, that consular protection by the Home State (where the journalist normally resides) is not a matter of discretion, but of legal obligation;
- Second, that the Host State (where the journalist is reporting) has responsibilities both to the Home State and to the journalist at risk;
- Third, that the rights of the journalist at risk are often marginalised or ignored, at the expense of consular protection;
- Finally, that the international community is not a bystander community, but a protective one.

A copy of the report is available at:

[www.ibanet.org/Consular-Support-report-launch-2020.aspx](http://www.ibanet.org/Consular-Support-report-launch-2020.aspx)

## **Advice on Promoting More Effective Investigations into Abuses against Journalists**

25 NOVEMBER 2020

Authored by Nadim Houry, Executive Director of the Arab Reform Initiative, human rights lawyer and member of the High Level Panel of Legal Experts on Media Freedom, the report has been endorsed by the High Level Panel, the [International Bar Association's Human Rights Institute](#), Reporters without Borders, and the UN Special Rapporteur on Freedom of Expression, David Kaye, (2014-2020). The report examines the increasing and varied nature of attacks against journalists and the persistent, rampant impunity. The report reviews the existing efforts to promote effective investigations and assesses the constraints of the present system. The report concludes with three major recommendations to the signatories to the Global Pledge on Media Freedom and other key governments to strengthen investigations into attacks on journalists, address the issue of impunity and progress towards accountability.

A copy of the report is available at:

[www.ibanet.org/HRI-Secretariat/Reports.aspx#enforcement](http://www.ibanet.org/HRI-Secretariat/Reports.aspx#enforcement)



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