

Remarks of Mr. Nadim Houry
Launch of the High Level Panel of Legal Experts on Media Freedom Report ‘Advice on Promoting More Effective Investigations into Abuses Against Journalists’
25 November 2020

The premise of this report is in some ways simple. It starts with three facts:

- Fact 1: almost 90% of killings of journalists go unpunished. They are not successfully investigated or prosecuted;
- Fact 2: This rampant impunity is not limited to countries experiencing armed conflict or general collapse of the rule of law. Actually, since 2017, most killings of journalists occur outside war zones. They occur in places like Mexico, Philippines, but increasingly in places previously considered safe for journalists, like Malta; and
- Fact 3: The situation is not getting better despite multiple and important initiatives at the international, regional and local level. We have seen increased attention to the issue of impunity. In 2013, the UN general assembly proclaimed November 2, as the International Day to End impunity for Crimes against Journalists, and yet we continue to see an increase in the number of attacks on journalists. It is actually a strange situation – which the report describes in detail, where over the last few years, you see more reports, more UN resolutions, more attention to the question, but there is a disconnect between all this, and on the other hand, an ongoing and blatant impunity where too few cases get successfully investigated and prosecuted.

Based on these facts, this report set out to answer two questions:

1. Why are so few investigations into attacks on journalists succeeding and leading to prosecution?
2. What can be done to finally start tackling the issue?

In trying to answer these questions, we were greatly helped by the amazing work done by so many NGOs, UN agencies (from UNESCO to Special Rapporteurs) who have been doing painstaking work to document all the attacks against journalists and monitor progress of investigations. What comes out is really 2 types of reasons for the ongoing impunity:

- 1) Lack of capacity: very often local authorities don't have the capacity, the know how, the resources, to protect a crime scene, to gather digital evidence, to exploit forensic evidence, to question powerful suspects.

But more often than not, it is:

- 2) Lack of Political Will. In many cases, the authorities are unwilling to really investigate. Why? Because journalists, particularly good journalists, tend to bother those in power. And often behind the attacks, lie powerful actors.

And this is the key difference between a regular crime on the street and an attack on a journalist. When investigating an attack on a journalist, there are powerful interests at every step of the way

try to block the investigation. So how do you break this vicious circle? One approach would have been to say we need to train local law enforcement. This is important and is taking place in a number of countries. But we know this takes years if not decades, and frankly, in countries where we have seen such efforts, results have been underwhelming. We do not have the luxury of time.

What can be done internationally? The main recommendation of this report is to set up a standing Investigative Task Force made up of vetted and trained investigators, forensic experts, legal specialists – that can quickly deploy to crime scenes and support investigations. They could support:

- a) National investigations;
- b) Regional investigations;
- c) UN Mechanisms investigating; and
- d) And in some cases, even NGO-led investigations

Sending international experts to conduct criminal investigations or assist local investigations has proven effective in overcoming local capacity issues in many contexts – from countering terrorism to cross-border organized crime. But such deployments – when done in an ad-hoc manner - often require lengthy negotiations and logistical build-up which reduces their effectiveness. Hence the importance of a ready to deploy task force.

Where should this Investigative Task Force exist? Ideally, a standing international task force dealing with a global problem would exist with a UN mandate and the report joins the growing number of voices calling for a permanent investigative body within the UN system. But the Panel recognizes that – regrettably – the creation of a permanent UN investigative body does not seem to currently have political support. And until such time, we need to work on an alternative / to provide concrete answers to the question **Therefore, the report recommends that the 40 countries that have formed the Media Freedom Coalition and pledged to “work together to protect media freedom” to set up a multilateral Investigative Task Force composed of international experts readily available to support investigations – local, regional or international – into attacks on journalists.**

A multilateral investigative task force set up by a group of like-minded countries that form the Media Freedom Coalition – a sort of “coalition of the committed” – would present a number of key strengths:

- It will be less susceptible to current UN blockages and can be set up faster and with less compromises;
- Its creation by a group of 40 countries from different parts of the world including many regional champions of media freedom - means that this group should provide political credibility and a deeper pool of talent than any unilateral or bilateral initiative. In particular, such a task force will be able to draw on a wide range of investigative and legal skills as well as regional and linguistic expertise; and
- It will complement existing mechanisms. A multilateral Investigative Task Force would support existing UN, regional and national institutions and investigations. In an interview

for this report with Professor David Kaye, the former **UN Special Rapporteur on Freedom of Expression** noted, that thought his many fact finding missions as special rapporteur, one of the key challenges has been the lack of investigative support. He added, “access to quickly deployable investigators – from forensic specialists to digital experts – would make the work of UN special rapporteurs more impactful.”

To ensure the success of the Investigative Task Force, **Signatories to the Global Pledge on Media Freedom** should:

- 1) Commit sufficient financial resources to the Task Force to allow it to operate effectively and sustainably. But we believe that it is a small price to pay for ending impunity. What we are dealing with here is not just an attack on journalists, but on democracy and democratic principles;
- 2) In case a particular Signatory is unable to commit funds, it should at the very least make available qualified nationals to assist the Task Force at no cost. Areas of expertise could include criminal investigators, forensic and digital experts, specialist interviewers, lawyers, or prosecutors; and
- 3) Commit to use political advocacy in both bilateral and multilateral contexts to facilitate the work of the Investigative Task Force, notably the access of its investigators to potential crime scenes.

The Task Force should be hosted by an organization with global reach, independence, and the right convening power. A natural candidate would be the International Bar Association, which is already acting as the Secretariat for the High Level Panel of Legal Experts on Media Freedom and is a pioneer in promoting human rights and the rule of law.

The report also makes two other sets of recommendations that I will run through.

The second set of recommendations deals with thinking of ways to strengthen evidence gathering. The report takes note that in recent years, many NGOs have expanded their work to include gathering evidence for purposes of criminal investigations. This has become increasingly visible in war zones, where often it takes time to deploy international investigators or through the development of open source investigation techniques. These efforts open new possibilities in further accountability for crimes, including attacks on journalists, but they also raise a number of questions, around: untrained collection of physical or forensic evidence, protection of witnesses, or possible re-traumatization of witnesses.

NGOs engaged in evidence gathering efforts related to attacks on journalists should adopt best practices – be they ethical principles or investigation guidelines – in their efforts to investigate attacks on journalists. Luckily, there are a number of important initiatives to develop such guidelines and our recommendation here is on state signatories to the Global Pledge on Media Freedom to support and fund efforts to disseminate best practices for collecting and sharing evidence between NGOs and UN/judicial institutions and support capacity building initiatives

for local groups working on investigating attacks on journalists – particularly in countries with rampant impunity – are able to play a constructive role in evidence gathering.

The third set of recommendations focuses on how to raise the political cost for inaction. To date, despite the adoption of multiple resolutions calling for more effective investigations, there is still little to no political cost to governments and officials that attack journalists or purposely block or undermine investigations. As strong believers in international institutions, naturally, we have a number of recommendations to strengthen the UN response.

The UN should increase its efforts to hold the worst violators of media freedom politically accountable at the Security Council and general assembly. Right now, the UN Secretary General reports periodically to the Security Council and the General Assembly about attacks on journalists. But the reporting is not currently tied to specific actions. One way to overcome this is to:

- Ask the UN Secretary General to develop a list of the worst violators of journalists' rights and present it to the Security Council and/or General Assembly. This can be based on the very helpful indexes created by the Committee to Protect Journalists and Reporters without Borders, as well as UNESCO and other UN sources; and
- Outline specific consequences of being on the list such as targeted financial sanctions against those most responsible, and specific milestones that constitute conditions for removal from the list, including, where appropriate, allowing the UN to effectively investigate attacks on journalists.

Such a system is already in place in the UN for groups and countries that are the worst violators of rights of children in armed conflict. And the list has been described by many advocacy groups as a powerful tool for change over the year. [32 action plans have been signed since the beginning of the system, this number includes government and non-state armed groups. Of those, 12 parties (state and non-state) have fully complied with their commitment and were subsequently delisted.]

To help raise the profile of these efforts, states should support the establishment of a **new UN Special Representative for Journalists and Human Rights Defenders Safety** so that the UN system can be more effectively engaged politically in advancing accountability for crimes against journalists. Appointed by the Secretary General, the Special Representative's mandate would include following up on progress of investigations into attacks on journalists and human rights defenders. Here the report endorses the proposal carried by civil society, and notably Reporters Sans Frontiers whose Director General will speak shortly.

The Way Forward

As the Global Pledge on Media Freedom recognized, **“In the face of threats to media freedom that are new in scale and in nature, we must adopt new forms of collaboration that adapt to new realities.”** It is this report’s conclusion that any successful effort will require increased collaboration and innovation between the UN, individual member states, and NGOs. It cannot be business as usual and the corner stone of effort to end impunity is getting investigators to crime scenes as fast as possible. The best way to do so is to have an Investigative Task Force that can ensure quick deployments of international investigators and experts. Thank you.