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***Towards an effective framework of protection for the work of journalists
and an end to impunity***

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**The Protection and Safety of Journalists:
A Review of International and Regional Human Rights Law**

Background paper

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I. INTRODUCTION

1. This paper provides a review of international and regional law, including soft-law, on the protection of journalists. Through its analysis of international human rights and humanitarian law as well as regional law emanating from the European Court of Human Rights and the Inter-American Court on Human Rights in particular, this paper takes stock of states' obligations on the protection and safety of journalists, with the aim of raising awareness of the position of international and regional law on the protection and safety of journalists. More specifically, the paper is intended as background for the conference on the subject of the protection of journalists to be held at the European Court of Human Rights on 3 November 2014.² It hones in on the *physical* protection and safety of journalists because of the focus of this forthcoming conference on "acts of violence committed against journalists and others exercising their freedom of expression", as well as recent high profile violent attacks on journalists. For the purposes of this paper, the term "protection" is interpreted narrowly to mean protection of journalists from physical attack or assault, which may or may not result in killing, rather than legal protection of journalists in conducting their work more generally. Thus, while the paper addresses briefly certain issues concerning the broader environment for media freedom, such as the protection of journalistic sources and criminal defamation laws, it refrains from examining important challenges to the protection of journalists in the performance of their work, such as restrictions on access to information and national security policies, including surveillance measures, and will not address the obligations or ethical responsibilities of journalists.³ Rather, through setting out the relevant elements of international and regional human rights and humanitarian law on the protection and safety of journalists, this paper seeks to identify the key components that should inform a comprehensive legal and policy framework to address the most pressing challenge facing journalists, namely actual or the threat of violence.⁴

² For a selection of relevant articles in academic journals, see: Ben Saul, "The International Protection of Journalists in Armed Conflict and Other Violent Situations" (2008) 14(1) *Australian Journal of Human Rights* 99 – 140; Isabel Düsterhöft, "The Protection of Journalists in Armed Conflicts: How Can They Be Better Safeguarded?" 29(76) *Merkourios, Utrecht Journal of International and European Law* 4 – 22; Christof Heyns and Sharath Srinivasan, "Protecting the Right to Life of Journalists: The Need for a Higher Level of Engagement" (2013) 36 *Human Rights Quarterly* 304 – 332. See also the following research papers: Carmen Draghici and Lorna Woods, "Safety of Journalists: A Responsibility for the World –Research and Recommendations from the Working Conference of "The Initiative on Impunity and the Rule of Law", A Policy Research and Advocacy Project of the Centre for Law, Justice and Journalism (CLJJ), City University London and Centre for Freedom of the Media (CFOM), University of Sheffield, at City University, London on 1 June 2011; Evie Browne, Thomas Probert, Mona Elbahtimy and Sarah Elliot, "Safety of Journalists Research Pack", Centre of Governance and Human Rights (CGHR), University of Cambridge, June 2012.

³ These issues from the perspective of the jurisprudence of the European Court of Human Rights, have been well covered by the recent paper by Philip Leach. Philip Leach, "The principles which can be drawn from the case-law of the European Court of Human Rights relating to the protection and safety of journalists and journalism", Report prepared for Council of Europe Conference of Ministers responsible for Media and Information Society, Freedom of Expression and Democracy in the Digital Age, *Freedom of Expression and Democracy in the Digital Age: Opportunities, Rights and Responsibilities*, Belgrade 7 – 8 November 2013, MCM (2013) 012 CDMSI (2013)Misc3. See also, Tarlach McGonagle, "How to address current threats to journalists?: The role of the Council of Europe in protecting journalists and other media actors", Expert paper prepared for Council of Europe Conference of Ministers responsible for Media and Information Society, Freedom of Expression and Democracy in the Digital Age, *Freedom of Expression and Democracy in the Digital Age: Opportunities, Rights and Responsibilities*, Belgrade 7 – 8 November 2013, MCM (2013) 009.

⁴ As the OAS Special Rapporteur emphasised: "in order for free, robust and unrestricted democratic debate to exist, violence against journalists must be combated through a comprehensive policy of prevention, protection and procurement of justice". Inter-American Commission on Human Rights, *Violence against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection and Prosecution of Perpetrators*, OEA/Ser.L/V/II, CIDH/RELE/Inf.12/13, 31 December 2013 at p 22.

II. CONTEXT: GROWING MOMENTUM ON A MATTER OF GLOBAL CONCERN

2. At the end of a summer of widely reported attacks on journalists, the subject of this paper seems extremely timely. The paper is produced at the end of August 2014, a bleak month for journalists and media workers “at home and abroad”⁵ marked by such instances as: the horrific, videoed beheading by a so-called “Islamic State” (ISIS) militant of James Foley, an American freelance journalist kidnapped in Syria in 2012; the killing of at least fifteen journalists and media workers as a result of the on-going conflict in the Gaza Strip; the arrest, detention and assault of reporters covering protests in Ferguson, Missouri in the United States; and the beating unconscious of Ilgar Nasibov, the latest episode in the crackdown on the media in Azerbaijan which currently chairs the Council of Europe’s Committee of Ministers.⁶ For various reasons, these cases have gained a spectrum of international attention, with Foley’s ghoulish murder drawing public condemnation from global leaders,⁷ the cases of journalists in Gaza and Ferguson, Missouri having received some coverage,⁸ whereas the attack on Nasibov seems to have barely been registered.⁹ Notwithstanding these very recent and high profile attacks on journalists, there has been for a number of years an evolving global consciousness coupled with more effective advocacy and concentrated research on the issue.¹⁰ As UNESCO’s 2014 report, *World Trends in Freedom of Expression and Media Development*, states: “past six years have seen both a rise in the killings of journalists and a significant increase in international awareness of the issue”.¹¹ Non-governmental organisations with mandates on the protection of journalists as such (e.g. Committee to Protect Journalists), on freedom of expression more broadly (e.g. ARTICLE 19) and human rights generally (e.g. Human Rights Watch) have employed techniques of monitoring, analysis and advocacy to expose attacks upon local and foreign journalists and media workers.¹² According to the Committee to Protect Journalists, as of 26 August 2014, 1072 journalists have been killed since 1992, out of which 621 with complete impunity.¹³ Some of these organisations have drawn up protection manuals for journalists and media workers to take actions to protect themselves from attack,¹⁴ whilst the International

⁵ See Ravi Somaiya and Christine Haughney, “From Missouri to Syria: Journalists are becoming targets”, *The New York Times*, 20 August 2014.

⁶ For press reports of these various incidents, see: Rukmini Callimachi, “Militant Group Says It Killed American Journalist in Syria”, *The New York Times*, 19 August 2014; Max Fisher, “If police in Ferguson treat journalists like this, imagine how they treat the residents”, *Vox*, 26 August 2014; Raziye Akkoc, “Gaza conflict: Foreign journalist among five killed after an Israeli missile explodes”, *The Telegraph*, 13 August 2014; Radio Free Europe/Radio Liberty Azerbaijani Service, “Azerbaijani Journalist Severely Beaten”, 30 August, 2014.

⁷ In a statement shortly after news of Foley’s murder broke, President Obama stated: “Jim was a journalist, a son, a brother, and a friend. He reported from difficult and dangerous places, bearing witness to the lives of people a world away. He was taken hostage nearly two years ago in Syria, and he was courageously reporting at the time on the conflict there.” Statement by the President, The White House, Office of the Press Secretary, 20 August 2014. See also the statement attributable to the Spokesman for the United Nations Secretary-General, Ban Ki-Moon, on the murder of journalist James Foley, 20 August 2014; and the statement from the UK Prime Minister’s office following the release of a video allegedly showing the brutal murder of US journalist James Foley, 20 August 2014. Amnesty International emphasised that the killing of James Foley constitutes a war crime and “highlights the urgent need for all states with influence in the region to ensure other missing journalists are safely released”; Amnesty International, “Syria: ‘Beheading’ of US report a war crime that highlights ‘chilling’ risk to journalists”, press release, 20 August 2014.

⁸ Non-governmental organisations and some media outlets have highlighted the cases of Ferguson, Missouri and Gaza. See, for example, Committee to Protect Journalists, “CPJ condemns ongoing harassment, arrest of reporters in Ferguson”, 19 August 2014; Reporters Without Borders, “Palestinian Media Toll Reaches 13”, 13 August 2014.

⁹ See, however, Committee to Protection Journalists, “Journalist Severely Beaten in Nakhchivan Republic of Azerbaijan”, 29 August 2014.

¹⁰ *Ibid*, n 1.

¹¹ UNESCO, *World Trends in Freedom of Expression and Media Development* (Paris: UNESCO, 2014) at p 11; see also 84 – 95.

¹² Other relevant organisations include: Amnesty International, Reporters without Borders, Freedom House, International Federation of Journalists, International Press Institute.

¹³ See statistics collated by Committee to Protect Journalists at <http://www.cpi.org/killed/> and <http://www.cpi.org/killed/impunity.php> For an interesting “statistical overview” of attacks on journalists, see Christof Heyns and Sharath Srinivasan, “Protecting the Right to Life of Journalists: the Need for a Higher Level of Engagement” 36 (2013) *Human Rights Quarterly* 304 – 332, 307.

¹⁴ See the following examples of self-protection manuals: ARTICLE 19, “How to Protect Yourself During Protests: A19 Video Tutorial”, 13 December 2013 <http://www.article19.org/resources.php/resource/37406/en/how-to-protect-yourself-during-protests--a19-video-tutorial>; Committee to Protect Journalists, *Journalist Security Guide*, 2012; Reporters without Borders, *Handbook for journalists*, 17 February 2006; Reporters without Borders, *Charter for the Safety of Journalists Working in War Zones or Dangerous Areas*, 30 May 2002.

Committee for the Red Cross (ICRC) maintains a long-established hotline for journalists on dangerous assignments.¹⁵

3. This paper is also written against the background of a growing engagement by international human rights bodies on the protection and safety of journalists and their urging for effective state responses to the challenge of attacks on journalists.¹⁶ More specifically, it is written in the wake of the panel discussion on the safety of journalists at the twenty-sixth session of the Human Rights Council in June 2014 and at the time of the drafting and negotiation of a resolution on the safety of journalists and impunity to be tabled by Austria at the twenty-seventh session of the council in September 2014, a resolution that is expected to be adopted. Signalling a sense of heightened urgency, on 1 September 2014, the four intergovernmental experts with mandates on freedom of expression – namely, the UN Special Rapporteur on freedom of opinion and expression, David Kaye, the Organization for Security and Co-operation in Europe Representative on Freedom of the Media (“OSCE”), Dunja Mijatović, the Organization of American States (“OAS”) Special Rapporteur for Freedom of Expression, Catalina Botero Marino, and the African Commission on Human and Peoples’ Rights Special Rapporteur on Freedom of Expression and Access to Information, Faith Pansy Tlakula – also issued a joint statement urging stronger protection of journalists covering conflicts, referring to the contexts of Syria, Ukraine, Iraq and Gaza.¹⁷
4. Even before these recent initiatives, however, a range of global intergovernmental institutions and actors have been addressing the issue of the protection of journalists since the adoption of UN Security Council Resolution 1738 in 2006 focusing on attacks on journalists in conflict situations only.¹⁸ The attention of international human rights bodies, which has been stepped up since 2012 at the UN, encompasses: the adoption of Human Rights Council resolution 21/12 of 27 September 2012 on the safety of journalists and Human Rights Council decision 24/116 of 26 September 2013 on a panel discussion on the safety of journalists;¹⁹ the adoption of General Assembly resolution 68/163 of 18 December 2013 on safety of journalists and the issue of impunity which declared 2 November the “International Day to End Impunity for Crimes Against Journalists”;²⁰ the presentation of the reports of two UN mandate-holders, on the right to freedom of opinion and expression and on extrajudicial, summary or arbitrary executions focussing on the protection of journalists at the twentieth session of the Human Rights Council in June 2012;²¹ the May 2012 report of the Secretary-General on the protection of civilians in armed conflict which highlights attacks on journalists;²² a series of informal discussions of the Security Council on the protection of journalists through 2013;²³ the endorsement of the United Nations Plan of Action on the Safety of Journalists and the Issue of Impunity, by the United Nations System Chief Executives Board for Coordination on 12 April 2012²⁴ and the development of

¹⁵ The International Committee for the Red Cross established the hotline in 1985 at the request of 16 major media organisations. See International Committee for the Red Cross, “When journalists’ safety is at stake, the ICRC hotline can help”, Interview, 2 May 2012.

¹⁶ Summary of the Human Rights Council panel discussion on the safety of journalists prepared by the Office of the High Commissioner for Human Rights, 2 July 2014, A/HRC/27/35 Advanced United Version.

¹⁷ Office of the High Commissioner of Human Rights, “International freedom of expression rapporteurs urge stronger protection of journalists covering conflicts”, press release, 1 September 2014.

¹⁸ Security Council Resolution 1738 (2006) of 23 December 2006, S/RES/1738.

¹⁹ Human Rights Council Resolution 21/12 of 27 September 2012, A/HRC/RES/21/12; and Human Rights Council Decision 24/116 of 26 September 2013, A/HRC/DEC/24/116.

²⁰ General Assembly Resolution 68/163 of 18 December 2013, A/RES/68/163.

²¹ Human Rights Council, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank la Rue, 4 June 2012, A/HRC/20/17; and Human Rights Council, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, 10 April 2012, A/HRC/20/22.

²² Security Council, Report of the Secretary-General on the protection of civilians in armed conflict, 22 May 2012, S/2012/376 at paras 5, 14 and 15.

²³ See UN News Centre Release, “Veteran journalists, UN deputy chief urge Security Council to do more to protect reporters”, 17 July 2013; UN News Centre Release, “Security Council must pay more attention to attacks on journalists, UN expert warns”, 13 December 2013.

²⁴ UNESCO, International Programme for the Development of Communication (IPDC), *UN Plan of Action on the Issue of the Safety of Journalists and the Issue of Impunity*, April 2012, CI-12/CONF.202/6.

security indicators to evaluate steps taken towards implementation of UN Plan of Action;²⁵ and relevant UNESCO declarations and decisions in 2012 and 2013.²⁶ In June 2012, the four international mechanisms for promoting freedom of expression adopted a Joint Declaration on Crimes against Freedom of Expression, which expressly identifies journalists and other media actors as the most likely victims of such crimes.²⁷ This relatively recent declaration by the four international intergovernmental experts on freedom of expression is drawn upon as a lodestar reference point for identifying the specific standards applicable to states with respect to the protection and safety of journalists, even though it does not indicate binding legal obligations.

5. Together with the Organization of American States Special Rapporteur on Freedom of Expression, the UN Special Rapporteur on freedom of opinion and expression issued a joint statement on “violence against journalists and media workers in the context of protests” in September 2013.²⁸ For its part, the Office of the Organization of American States Special Rapporteur for Freedom of Expression published a substantial analytical report, *Violence against journalists and media workers: Inter-American standards and national practices on prevention, protection and prosecution of perpetrators* at the very end of 2013,²⁹ though the office regularly condemns attacks on journalists in the region.³⁰ In addition, in March 2014, the Inter-American Commission on Human Rights held a hearing on “Impunity for Violations of the Right to Freedom of Expression in the Americas”.³¹
6. At the European regional level, the bodies of the Council of Europe have demonstrated particular interest in the protection and safety of journalists over the years through a raft of relevant declarations, resolutions, recommendations and other initiatives of the Committee of Ministers and the Parliamentary Assembly.³² Most recently, the Committee of Ministers of the Council of Europe adopted a declaration on “the protection of journalism and the safety of journalists and other media actors” towards the end of the committee chairmanship by Austria, for whom the safety of journalists was a strategic element and priority in April 2014,³³ and the Ministers of States of the Council of Europe responsible for media and information society adopted a resolution on the safety of journalists at a

²⁵ UNESCO, Journalists’ Safety Indicators: International Level, 25 July, 2013; UNESCO, Journalists’ Safety Indicators: National Level, 25 July, 2013; UNESCO, Journalists’ Safety Indicators Guidebook, 25 July, 2013.

²⁶ See World Press Freedom Day declarations, particularly Carthage Declaration, 3 May 2012 (supporting the UN Plan of Action on the Safety of Journalists and the Issue of Impunity) and San Jose Declaration, 4 May 2013. See also UNESCO General Conference resolution 29 on condemnation of violence against journalists, 12 November 1997; Belgrade Declaration on Support to Media in Violent Conflict and in Countries in Transition, 3 May 2004; Medellin Declaration on Securing the Safety of Journalists and Combating Impunity, 4 May 2007; and International Programme for the Development of Communication (IPDC) decisions on the safety of journalists and impunity of 27 March 2008, 10 March 2010 and 23 March 2012.

²⁷ The Joint Declaration indicates the crimes against freedom of expression include: “killings, death-threats, disappearances, abductions, hostage takings, arbitrary arrests, prosecutions and imprisonments, torture and inhuman and degrading treatment, harassment, intimidation, deportation, and confiscation of and damage to equipment and property”. See Joint Declaration on Crimes Against Freedom of Expression, June 2012. See also “Tenth Anniversary Joint Declaration, Ten Key Challenges to Freedom of Expression in the Next Decade”, February 2010 which identifies violence against journalists as one of the challenges.

²⁸ Joint Statement of the UN Special Rapporteur on freedom of opinion and expression and the Organization of American States Special Rapporteur on Freedom of Expression on violence against journalists and media workers in the context of protests, 13 September 2013.

²⁹ IACHR, Office of the Special Rapporteur for Freedom of Expression, Catalina Botero Marino, “Violence against journalists and media workers: Inter-American standards and national practices on prevention, protection and prosecution of perpetrators” 31 December 2013, OEA/Ser.L/V/II, CIDH/RELE/INF.12/13. IACHR, Office of the Special Rapporteur for Freedom of Expression, “Office presents report on violence against journalists and media workers”, press release 75/14, 21 July 2014.

³⁰ For examples of statements of the Office of the Special Rapporteur for Freedom of Expression in August 2014, see IACHR, Office of the Special Rapporteur for Freedom of Expression, press releases 89/14, 21 August 2014 (on the killing of a journalist in Honduras), 87/14, 16 August 2014 (on the killing of a journalist in Mexico); 85/14, 14 August 2014 (on the killing of a journalist in Colombia), 83/14, 6 August 2014 (on the attack on a journalist and the killing of his son in Mexico).

³¹ Organisation of American States, IACHR, Multimedia Section <http://oas.org/es/cidh/multimedia/sesiones/150/default.asp>

³² For lists of initiatives taken by Council of Europe bodies, see <http://www.coe.int/t/dghl/standardsetting/media/roundtable-en.asp>

³³ Declaration of the Committee of Ministers on the protection of journalism and safety of journalists and other media actors adopted by the Committee of Ministers on 30 April 2014 at the 1198th meeting of the Ministers’ Deputies. The Austrian chairmanship stated: “Freedom of expression and the safety of journalists will be the prime focus of Austria’s endeavours.” See Priorities of the Austrian Chairmanship of the Committee of Ministers of the Council of Europe (14 November 2013 – 14 May 2014), 5 November 2013 CM/Inf (2003) 32.

conference held in Belgrade in November 2013.³⁴ There have been also thematic debates of the Committee of Ministers on the safety of journalists since 2012,³⁵ the first meeting of the newly established Committee of Experts on the specific issue of the protection of journalists in March 2014³⁶ as well as a roundtable to promote dialogue between international institutions held in Strasbourg in May 2014.³⁷ Since 2011, the Parliamentary Assembly has adopted a resolution on the “state of media freedom in Europe” highlighting the obligations of states “to protect journalists against attacks on their lives and freedom of expression, and prevent impunity of the perpetrators” and a recommendation on the protection of journalists’ sources.³⁸ The “protection of journalists from violence” was the subject of an issue discussion paper produced by the Commissioner for Human Rights in 2011 as well as public statements.³⁹

7. Across the broader region of the Organization for Security and Co-operation in Europe, the Representative on Freedom of the Media, acting together with the Lithuanian Chairmanship of the organization in June 2011, adopted the “Vilnius Recommendations on the Safety of Journalists”, a set of guidelines for national governments, legislatures, law-enforcement agencies and the media to ensure safe working conditions for journalists.⁴⁰ In 2013, the Office of the Representative on Freedom of the Media launched the “End Impunity” campaign to underscore the threats to journalists in the region⁴¹ and in 2014 published the second edition of the *Safety of Journalists Guidebook*.⁴² The Office of the Representative on Freedom of the Media, Dunja Mijatović, appears a particularly prolific international mechanism for promoting freedom of expression in terms of highlighting individual instances of attacks on journalists and media workers as the biggest threats to media freedom in the region.⁴³ Mijatović has recently condemned attacks on journalists in states ranging from Russia and Ukraine, to the United States.⁴⁴

³⁴ Council of Europe Committee of Ministers, Resolution 3 on the Safety of Journalists, 3 November 2013.

³⁵ Council of Europe Information Document, “Thematic debate on the ‘safety of journalists’: Discussion paper presented by the Secretary-General” 22 March 2012, SG/Inf(2012)6; Council of Europe Information Document, “Thematic debate on the ‘safety of journalists – further steps for the better implementation of human rights standards’: Discussion paper presented by the Secretary General”, 2 December 2013, SG/Inf(2013)42; Council of Europe Information Document, “Thematic debate on the ‘safety of journalists – further steps for the better implementation of human rights standards’, proposals for follow up’: Discussion paper presented by the Secretary General”, 20 January 2014, SG/Inf(2014)2.

³⁶ Council of Europe Committee of Experts on protection of journalism and safety of journalists (MSJ-JO), 1st meeting 3 – 4 March 2014, 10 March 2014, MSJ-JO(2014)03.

³⁷ Roundtable on Safety of Journalists: From commitment to action, 19 May, Strasbourg http://www.coe.int/t/dghl/standardsetting/media/Round%20table%20outline_en.pdf

³⁸ Council of Europe Parliamentary Assembly Resolution 1920(2013), “The state of media freedom in Europe” adopted 24 January 2013; Council of Europe Parliamentary Assembly Recommendation 1950 (2011), “Protection of journalists’ sources” adopted 25 January 2011.

³⁹ Council of Europe Commissioner for Human Rights, Protection of Journalists from Violence: Issue Discussion Paper, 4 October 2011, CommDH(2011)44. See also Council of Europe Commissioner for Human Rights, “Keep the Press Free” Opinion on the occasion of World Press Freedom Day, 2 May 2014; Council of Europe Commissioner for Human Rights, “Safety of online media actors as a precondition for media pluralism and freedom of expression” Address by Nils Muiznieks at Joint Open Forum organised by the European Broadcasting Union, Council of Europe, OSCE and UNESCO, Internet Governance Forum, Baku, 7 November 2012, CommDH/Speech(2012)14.

⁴⁰ Organization for Security and Co-operation in Europe Representative on Freedom of the Media, “Vilnius Recommendations on the Safety of Journalists”, 8 June 2011, CIO.GAL/111/11.

⁴¹ Organization for Security and Co-operation in Europe Representative on Freedom of the Media, “End Impunity Campaign Launched”, 16 December 2013 updated 14 August 2014 .

⁴² Organization for Security and Co-operation in Europe Representative on Freedom of the Media, *Safety of Journalists Guidebook 2nd edition* (OSCE: Vienna, 2014).

⁴³ Organization for Security and Co-operation in Europe Representative on Freedom of the Media, “Journalists’ safety remains biggest media freedom challenge in Ukraine, says OSCE representative”, press release, 20 August 2014. See also, Dunja Mijatović, “Protection of journalists from violence” in Council of Europe Commissioner for Human Rights, *Human rights and a changing media landscape* (Council of Europe, December 2011) at pp 21 – 45.

⁴⁴ See a selection of the press releases of the Organization for Security and Co-operation in Europe Representative on Freedom of the Media on the issue of safety of journalists in the month of August 2014 alone: “Russian authorities must end impunity for attacks on journalists, says OSCE Representative following another attack in Pskov”, press release, 30 August 2014; “OSCE Representative condemns attacks on journalists in Russia, calls on authorities for swift and thorough investigations”, press release, 27 August 2014; “OSCE Representative alarmed by brutal attack on journalist in Azerbaijan, warns of continuing deterioration of media freedom”, press release, 22 August 2014; “OSCE representative calls on Russian authorities to fight impunity and ensure journalists’ safety following attack on journalist in Dagestan”, press release, 21 August 2014; “OSCE representative calls on US law enforcement authorities to investigate arrests of reporters covering Ferguson demonstrations”, press

III. ENGAGEMENT OF HUMAN RIGHTS

8. Though targeted killings, obviously the gravest of attacks on journalists, in war zones grab the headlines, journalists and media workers are also subjected to serious physical violence and assaults, abductions and disappearances, as well as threats, intimidations and harassment. Female journalists are especially vulnerable to sexual abuse, assault and violence.⁴⁵ Moreover, journalists may feel threatened or coerced by measures taken against them as journalists by state authorities – such as restrictions on their movement, the seizure and confiscation of their property (e.g. notes, memory cards, cameras, hard drives) and sanctions for their refusal to reveal their sources – or by a hostile climate for the media more generally – through outright censorship (e.g. banning or blocking of websites), criminalisation of defamation, licensing conditions, national security legislation and surveillance programmes.⁴⁶ This range of “attacks” on journalists in the performance of their work has real and multiple consequences: the killed are silenced forevermore; survivors of attacks are less likely to continue their work; other media professionals, who are intimidated by what they observe, engage in self-censorship; the public is prevented from seeking and receiving information freely as a result of the “chilling effect” that creeps in, particularly amongst journalists; the ensuing impunity that almost always follows a killing or an attack which simply makes further killings and attacks more likely; and opportunities for democratic debate, oversight and accountability of state institutions and private actors wielding power are diminished.
9. Cases of attacks and threats on journalists engage a number of rights as protected by the core international and regional human rights instruments, notably:
 - a. the right to life under Article 3 of the Universal Declaration of Human Rights (“UDHR”), Article 6 of the ICCPR of the International Covenant on Civil and Political Rights (“ICCPR”), Article 2 of the European Convention on Human Rights (“ECHR”), Article 4 of the American Convention on Human Rights (“ACHR”) and Article 4 of the African Charter on Human and Peoples’ Rights (“ACHPR”);
 - b. the right to freedom of opinion and expression under Article 19 of the UDHR, Article 19 of the ICCPR, Article 10 of the ECHR, Article 13 of the ACHR and Article 9 of the ACHPR.
10. While the right to life and freedom of expression have been the key rights in the leading judgments and authoritative considerations on attacks on journalists, other human rights may also be implicated, notably:⁴⁷

release, 19 August 2014; “OSCE media freedom representative concerned about ban on journalist from entering Crimea”, press release, 18 August 2014; “OSCE Representative says media has right to cover civil disturbances without intimidation”, press release, 14 August 2014. “OSCE Representative condemns attack on journalist in Crimea”, press release, 13 August 2014; “OSCE Representative calls for immediate release of missing journalist in eastern Ukraine”, press release, 11 August 2014; “OSCE representative deplores intensifying harassment of media freedom activists and organisations in Azerbaijan, calls on authorities to stop persecution of free voices”, press release, 8 August 2014; “Intimidation of Turkish journalist by political leadership threatens media freedom and journalists’ safety, says OSCE media freedom representative”, press release, 8 August 2014; “OSCE media freedom representative worried about new reports of missing journalists in eastern Ukraine”, press release, 5 August 2014; “OSCE media freedom representative mourns death of journalist in Russia, calls for rigorous investigation”, press release, August 2014.

⁴⁵ For a useful survey of the range of attacks women journalists and media workers face, see Alana Barton and Hannah Storm, International Women’s Media Foundation and International News Safety Institute, *Violence and Harassment against Women in the News Media: A Global Picture*, 10 March 2014. See also Human Rights Council, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank la Rue, 4 June 2012, A/HRC/20/17 at paras 52 and 94; and Human Rights Council, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, 10 April 2012, A/HRC/20/22 at para 107.

⁴⁶ See Joint Declaration on Crimes Against Freedom of Expression, June 2012.

⁴⁷ Philip Leach, “The principles which can be drawn from the case-law of the European Court of Human Rights relating to the protection and safety of journalists and journalism”, Report prepared for Council of Europe Conference of Ministers responsible for Media and Information Society,

- a. the prohibition on torture and cruel, inhuman or degrading treatment or punishment under Article 5 of the UDHR, Article 7 of the ICCPR, Article 3 of the ECHR, Article 5 of the ACHR and Article 5 of the ACHPR;
 - b. the right to liberty and security under Article 3 of the UDHR, Article 9 of the ICCPR, Article 5 of the ECHR, Article 7 of the ACHR and Article 6 of the ACHPR;
 - c. the right to a fair hearing under Article 10 of the UDHR, Article 14 of the ICCPR, Article 6 of the ECHR, Article 8 of the ACHR and Article 7 of the ACHPR;
 - d. the right to freedom of thought, conscience and religion under Article 18 of the UDHR, Article 18 of the ICCPR, Article 9 of the ECHR, Article 12 of the ACHR and Article 8 of the ACHPR;
 - e. the right to privacy, family, home or correspondence under Article 12 of the UDHR, Article 17 of the ICCPR, Article 8 of the ECHR, Article 11 of the ACHR;
 - f. the rights to freedom of assembly and association under Article 20 of the UDHR, Articles 21 and 22 of the ICCPR, Article 11 of the ECHR, Article 15 and 16 of the ACHR and Articles 10 and 11 of the ACHPR;
 - g. the right to an effective remedy or judicial protection under Article 8 of the UDHR, Article 2 of the ICCPR, Article 13 of the ECHR, Article 25 of the ACHR;
 - h. the right to property under Article 17 of the UDHR, Article 1 of Protocol 1 of the ECHR, Article 21 of the ACHR and Article 14 of the ACHPR.
11. The following sections set out the key legal provisions of international and regional instruments on the right to life and on freedom of expression.

1. The right to life

12. The right to life – the “supreme right from which no derogation is permitted even in time of public emergency which threatens the life of the nation,” according to the Human Rights Committee⁴⁸ – is protected in the following terms.⁴⁹

Article 3 of the UDHR

Everyone has the right to life, liberty and security of person.

Article 6 of the ICCPR

Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

Article 2 of the ECHR

1. Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:
 - (a) in defence of any person from unlawful violence;
 - (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
 - (c) in action lawfully taken for the purpose of quelling a riot or insurrection.

Article 4 of the ACHR

Freedom of Expression and Democracy in the Digital Age, *Freedom of Expression and Democracy in the Digital Age: Opportunities, Rights and Responsibilities*, Belgrade 7 – 8 November 2013, MCM (2013) 012 CDMSI (2013) Misc3 at para 3.

⁴⁸ Human Rights Committee, General Comment No 6 on Article 6 on the right to life, UN Doc HRI/GEN/1/Rev.6 (1982) at para 1.

⁴⁹ Provisions on the death penalty have been excluded.

1. Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.

Article 4 of the ACHPR

Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.

2. The right to freedom of expression

13. The right to freedom expression – an “indispensable condition for the full development of the person”, “essential for any society” and “the foundation stone for every free and democratic society”, according to the Human Rights Committee⁵⁰ – is protected under the following provisions in international and regional law.

Article 19 of the UDHR

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 19 of the ICCPR

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) For respect of the rights or reputations of others;
 - (b) For the protection of national security or of public order (ordre public), or of public health or morals.

Article 20

1. Any propaganda for war shall be prohibited by law.
2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

Article 10 of the ECHR

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Articles 13 of the ACHR

1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.
2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure:
 - (a) Respect for the rights or reputations of others; or
 - (b) The protection of national security, public order, or public health or morals.
3. The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.

⁵⁰ Human Rights Committee, General Comment No 34 on Article 19 on freedom of opinion and expression, CCPR/C/GC/34, 11 September 2011, para 2.

4. Notwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence.

5. Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.

Article 9 of the ACHPR.

1. Every individual shall have the right to receive information.
2. Every individual shall have the right to express and disseminate his opinions within the law.

14. Restrictions on the freedom of expression, including the freedom of journalists and media workers to expression, may be imposed in specific circumstances. Any restrictions on freedom of expression should: *first*, be prescribed or provided by law; *second*, pursue a legitimate aim, namely the respect of the rights or reputations of others, protection of national security, public order, public health or morals; and *third*, be necessary to secure the legitimate aim and meet the test of proportionality. It is important to note that this same test is incorporated in all regional human rights treaties (as indicated above) and applied by international and regional human rights bodies.

15. Before considering the implications of these rights, particularly freedom of expression and the right to life, for states' obligations in specific connection with the protection and safety of journalists, this paper will consider the relevance of international humanitarian law for the subject, given the contemporary threats to journalists and media workers in situations of armed conflict.

IV. SITUATIONS OF ARMED CONFLICT: INTERNATIONAL HUMANITARIAN LAW

16. International humanitarian law protects journalists and media workers in situations of armed conflict – such as the conflicts taking place in Syria, Iraq, Gaza and Ukraine at the time of writing.⁵¹

17. The efforts of the Press Emblem Campaign, a Geneva based non-governmental organisation, to advance a “draft proposal for an International Convention to strengthen the protection of journalists in armed conflicts and other situations including civil unrest and targeted killings”, which was proposed in December 2007, are noted at the beginning of this section.⁵² This proposed international treaty, which was intended to enhance the protection of journalists in armed conflict by according them a special legal status, was controversial and failed to gain support from key organisations working on journalists' protection,⁵³ such as the Committee to Protect Journalists, or the International Committee for the Red Cross, which works towards the respect of international humanitarian law through, among other things, its Commentaries.⁵⁴ The campaign for the adoption of such a treaty has no traction now within intergovernmental bodies, such as the Human Rights Council and General Assembly, where the emphasis is upon the implementation of existing legal frameworks applicable to journalists.

⁵¹ Human Rights Watch deems the current hostilities between the Ukrainian government forces and separatists in Eastern Ukraine as a situation of domestic or internal armed conflict under international human rights law. See Human Rights Watch, “Eastern Ukraine: Questions and Answers About the Laws of War”, 1 July 2014.

⁵² Press Emblem Campaign, “Draft proposal for an International Convention to strengthen the protection of journalists in armed conflicts and other situations including civil unrest and targeted killings”, December 2007 <http://www.presseblem.ch/4983.html>

⁵³ See Kayt Davies and Emily Crawford, “Legal Avenues for Ending Impunity for the Death of Journalists in Conflict Zones: Current and Proposed International Agreements” (2013) 7 *International Journal of Communications* 2157 – 2177; Joanne M Lisosky and Jennifer Henrichsen, “Don't Shoot the Messenger: Prospects for protecting journalists in conflict situations” (2009) 2 *Media, War and Conflict* 129 – 148.

⁵⁴ See Geneva Conventions 1949 and their Additional Protocols, and their Commentaries <http://www.icrc.org/applic/ihl/ihl.nsf/vwTreaties1949.xsp>

1. The interrelationship of International Humanitarian and International Human Rights Law

18. According to the International Court of Justice in its Advisory Opinion in the *Legality of the Threat or Use of Nuclear Weapons* case, while the protections of international human rights law continue to exist in such situations of armed conflict, “the test of what is an arbitrary deprivation of life ... falls to be determined by the applicable *lex specialis*, namely, the law applicable in armed conflict” or international humanitarian law.⁵⁵ Therefore, the question of whether the killing of a journalist or media worker during an armed conflict is to be considered as an arbitrary deprivation of life contrary to Article 6 of the ICCPR “can only be decided by reference to the law applicable in armed conflict and not deduced from the terms of the Covenant itself.”⁵⁶ Notwithstanding the “special relevance” of the “specific rules of international humanitarian law for the purposes of interpretation of Covenant rights” in situations of armed conflict, the Human Rights Committee has emphasised that “both spheres of law are complementary, not mutually exclusive.”⁵⁷ The rules deriving from the bodies of international humanitarian law and international human rights law on the protection and safety of journalists should be interpreted to complement each other.

2. Protected status

19. The four Geneva Conventions⁵⁸ and their three Additional Protocols constitute the core of international humanitarian law.⁵⁹ Two key provisions in these instruments recognise that “special rules are required for journalists who are imperilled by their professional duties in the context of armed conflict”, given that such “circumstances ... expose journalists exercising their profession ... to dangers which often exceed the level of danger normally encountered by civilians”.⁶⁰

i. Journalists protected as civilians

20. First, “[j]ournalists engaged in dangerous professional missions in areas of armed conflict shall be considered as civilians” under Article 79 of the First Additional Protocol relating to the Protection of Victims in Armed Conflicts.⁶¹ This provision is of fundamental importance for the protection and safety of journalists and media workers in situations of armed conflict, whether international or non-international (otherwise called internal or domestic) conflict situations,⁶² and is also recognised as a

⁵⁵ International Court of Justice, *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion of 8 July 1996, ICJ Reports 1996 at para 25. See also Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions to the Human Rights Council, Christof Heyns, 10 April 2012, A/HRC/20/22, para 60.

⁵⁶ International Court of Justice, *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion of 8 July 1996, ICJ Reports 1996 at para 25.

⁵⁷ Human Rights Committee, General Comment No 31 on the Nature of the General Legal Obligation Imposed on States Parties to the Covenant, 29 March 2004, CCPR/C/21/Rev.1/Add.13 at para 11.

⁵⁸ See Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field; Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea; Convention (III) relative to the Treatment of Prisoners of War; Convention (IV) relative to the Protection of Civilian Persons in Time of War, all adopted 12 August 1949.

⁵⁹ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Additional Protocol I), 8 June 1977; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Additional Protocol II), 8 June 1977; Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem (Additional Protocol III), 8 December 2005.

⁶⁰ Additional Protocol I at para 3245.

⁶¹ Articles 79(1) Additional Protocol I.

⁶² See the explanation for Rule 34 of Customary International Humanitarian Law Database http://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule34 This states: “Although Additional Protocol II does not contain any specific provision on civilian journalists, their immunity against attack is based on the prohibition on attacking civilians unless and for such time as they take a direct part in hostilities (see Rule 6). This conclusion is borne out by practice, even before the adoption of the Additional Protocols.” The Organisation of American States’ Special Rapporteur for Freedom of Expression has observed: “where there are still internal armed conflicts, the aggressiveness and intolerance characteristic of the armed subjects continue to pose a grave threat to the lives and safety of journalists, critics and dissidents.” IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression, Chapter IV, 25 February 2009, OEA/Ser.L/V/II.134 Doc. 5 rev. 1, para 45.

rule of customary international law.⁶³ Under Article 79, journalists will be protected under international humanitarian law “provided that they take no action adversely affecting their status as civilians and without prejudice to the right of war correspondents accredited to the armed forces to the status” of prisoners of war (see the next part on the protection of war correspondents).⁶⁴ They may “obtain an identity card similar” to that indicated in the annex to the protocol. This “card, which shall be issued by the government of the State of which the journalist is a national or in whose territory he resides or in which the news medium employing him is located, shall attest to his status as a journalist”.⁶⁵

21. The authoritative Commentary on these treaty provisions emphasises that a journalist “does not lose this status by entering an area of armed conflict on a professional mission, even if he is accompanying the armed forces or if he takes advantage of their logistic support”⁶⁶ and that “war correspondents” are classified as civilians.⁶⁷ The Commentary indicates that the term “journalist” should be interpreted broadly and according to the “ordinary meaning of the word” for the purposes of international humanitarian law.⁶⁸ The term encompasses “correspondents and reporters writing for a daily newspaper” but also “a much wider circle of people working for the press and other media”.⁶⁹ The Commentary refers to the following definition provided by draft Article 2(a) of the International Convention for the Protection of Victims of International Armed Conflict as a “guide for the interpretation of Article 79”: “the word ‘journalist’ shall mean any correspondent, reporter, photographer, and their technical film, radio and television assistants who are ordinarily engaged in any of these activities as their principal occupation [...]”⁷⁰ At the same time, the Commentary explicitly excludes the possibility of according the status of journalist under Article 79 to “anyone who, as a member of the armed forces, has a function connected with information within the armed forces”.⁷¹ The meaning of “journalist” from the perspective international and regional human rights will be discussed further in a later part of this paper.

22. As a consequence of their status as members of the civilian population (albeit specifically protected), journalists and other media workers should be differentiated from combatants at all times during an armed conflict. In this regard, Article 48 of the First Additional Protocol provides that “the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives.” As a result of this “principle of distinction”, which also has customary international law status, journalists and media workers should not be objects of direct attacks.⁷² Article 51(2) of First Additional Protocol states, “the civilian population as such, as well as individual civilians, shall not be the object of attack,” where an “attack” is defined as an “[act] of violence against the adversary, whether in offence or in defence”.⁷³ Furthermore, “acts or threats of violence” against journalists or media workers, which have as their “primary purpose ... to spread terror among the civilian population,” are also prohibited under this provision. The prohibition on attacks or reprisals against

⁶³ See Rule 34 of Customary International Humanitarian Law Database which states: “Civilian journalists engaged in professional missions in areas of armed conflict must be respected and protected as long as they are not taking a direct part in hostilities.”

⁶⁴ Articles 79(2) Additional Protocol I.

⁶⁵ Articles 79(3) Additional Protocol I.

⁶⁶ Commentary to Additional Protocol I at para 3257.

⁶⁷ Commentary to Additional Protocol I at para 3259.

⁶⁸ Additional Protocol I at paras 3260 – 3261.

⁶⁹ Additional Protocol I at para 3260.

⁷⁰ Additional Protocol I at para 3260.

⁷¹ Additional Protocol I at para 3262.

⁷² Rule 1, The Principle of Distinction between Civilians and Combatants, Customary International Law Database, see https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule1. In its Advisory Opinion in *Legality of the Threat or Use of Nuclear Weapons*, the International Court of Justice affirmed that the principle of distinction was one of the “cardinal principles” of international humanitarian law and one of the “intransgressible principles of international customary law”, Advisory Opinion of 8 July 1996, ICJ Reports 1996 at para 79.

⁷³ Article 49 Additional Protocol I.

“civilian objects” under Article 52(1) of the First Additional Protocol may be applied to protect the premises of media outlets, which may not be “military objectives”, from attack.⁷⁴ Significantly, a deliberate attack on a journalist and media worker would also constitute a war crime under Article 8(2)(b)(i) of the Rome Statute of the International Criminal Court.⁷⁵ Yet under international humanitarian law, the onus lies upon states to investigate war crimes allegedly committed by their nationals or armed forces against journalists and media workers within their jurisdiction, and to prosecute the suspects.⁷⁶

ii. *War correspondents protected as prisoners of war*

23. Second, “war correspondents” as “persons who accompany the armed forces without actually being members thereof” should be counted as prisoners of war under Article 4A(4) of the Third Geneva Convention on the Treatment of Prisoners of War. The provision stipulates that such persons can only be counted as prisoners of war if “they have received authorization from the armed forces which they accompany, who shall provide them for that purpose with an identity card similar to the annexed model”.⁷⁷ In these circumstances war correspondents should be entitled to the same protections, such as those against inhumane treatment as well as to equal treatment and security, as applicable to prisoners of war.⁷⁸ As indicated earlier, journalists and other media workers must be protected and enjoy the same rights as civilians whether or not they possess an identity card as war correspondents.⁷⁹ In the case of capture or arrest by a party to a conflict, journalists and media workers are therefore entitled to being treated humanely and not being subjected to murder, mutilation, torture, cruel, humiliating and degrading treatment, unfair trial or being taken of hostage.⁸⁰
24. Various international and regional human rights bodies have affirmed the principle that journalists and media workers who engage in dangerous professional missions should be treated as civilians in situations of armed conflict. Most prominent among them is the Security Council, which through its Resolution 1738,⁸¹ provided “that media equipment and installations constitute civilian objects”.⁸² The Council of Europe Committee of Ministers has also recommended that “Member states should instruct their military and police forces to give necessary and reasonable protection and assistance to journalists when they so request, and treat them as civilians”.⁸³
25. Dispelling any doubt about the place of journalists and media workers in situations of armed conflict, in *Carlos Ranferí Gómez López v Peru*, the Inter-American Commission on Human Rights underscored that

⁷⁴ Article 52(2) Additional Protocol I states that “military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.”

⁷⁵ Adopted by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court on 17 July 1998.

⁷⁶ Rule 158, Prosecution of War Crimes, Customary International Law Database, see https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule158

⁷⁷ The commentary emphasises: “The application of this provision is therefore dependent on authorization to accompany the armed forces, and the identity card merely serves as proof. The identity card corresponds virtually to a soldier's uniform or a partisan's arm-band”; Commentary to Article 4 Part 1 General Provisions, Convention (III) relative to the Treatment of Prisoners of War.

⁷⁸ Articles 13, 16 and 23 Convention (III) relative to the Treatment of Prisoners of War.

⁷⁹ See Knut Dörmann, “International Humanitarian Law and the Protection of Media Professionals Working in Armed Conflicts”, Note, 1 December 2007 <http://www.icrc.org/eng/resources/documents/article/other/media-protection-article-.htm>

⁸⁰ Common Article 3 of Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 12 August 1949; Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 12 August 1949; Convention (III) relative to the Treatment of Prisoners of War, 12 August 1949; Convention (IV) relative to the Protection of Civilian Persons in Time of War, 12 August 1949. For a more detailed analysis, see Alexandre Balguy-Gallois, “The protection of journalists and news media personnel in armed conflict”, *International Review of the Red Cross* Vol 86 No 853 of March 2004, 33 – 67.

⁸¹ UN Security Council Resolution 1738 (2006), 23 December 2006, S/RES/1738 (2006) para 2 and 8.

⁸² UN Security Council Resolution 1738 (2006), 23 December 2006, S/RES/1738 (2006) para 3.

⁸³ Council of Europe Committee of Ministers, Recommendation No R (96)4 on the Protection of Journalists in Situations of Conflict and Tension, of 3 May 1996; Principle 8.

the activities of the petitioner journalist during his visit to an area of armed conflict “[constituted] a legitimate exercise of the right to free thought and expression”. The attempt on his life was therefore found to constitute a violation of the rights protected by Article 13 ACHR.⁸⁴ In an annual report, the OAS Special Rapporteur on Freedom of Expression emphasised that “journalists covering armed conflicts, in spite of the fact that they expose themselves to the risks, cannot ... lose their civilian status ... [and] continue to be protected by the applicable guarantees under International Humanitarian Law and International Human Rights Law, particularly the guarantees derived from the principle of distinction”.⁸⁵

3. Other specific protections for journalists in armed conflict

a. Freedom of expression

26. During armed conflicts journalists and other media workers therefore should be protected as civilians.⁸⁶ State authorities owe obligations to deliver protection to journalists in such situations if those authorities know that the particular journalists are especially vulnerable to being attacked. In the significant case of *Hugo Bustíos Saavedra v Perú*, which concerned the 1988 killing of an investigative journalist and the wounding of his colleague allegedly by a military patrol at a time when armed conflict was affecting the country, the Inter-American Commission on Human Rights recalled international humanitarian law prohibitions on attacks on civilians before focussing on the positive obligations of the state to protect the journalists. It stated that “though journalists or reporters in combat zones implicitly assume a risk of death or injury either incidentally or as a collateral effect of attacks on legitimate military targets, the circumstances surrounding the attacks [in this case] ... clearly indicate that they were not accidental, but intentional”.⁸⁷ The Inter-American Commission proceeded to find that the Peruvian state authorities knew that the journalists were in a conflict zone and failed to grant the journalists the necessary protection “in order for them to have the ability to carry out their function of seeking, covering, and disseminating information on occurrences in the area”.⁸⁸ It held that the attacks violated the freedom of expression of the murdered journalist and his injured colleague, but also that of the community of media outlets and journalists who felt threatened by these types of incidents of violence, as well as the right of society in general, which was deprived of public interest information about the armed conflict.⁸⁹ The Inter-American Commission emphasised that:

making the work of the press possible in periods of armed conflict, even with irregular armed combatants, requires the greatest protection. It is journalists who are risking their lives to bring the public an independent and professional view of what is really happening in areas of conflict.⁹⁰

⁸⁴ Inter-American Commission on Human Rights, Report No 29/96, Case 11.303, *Carlos Ranferí Gómez López v Guatemala*, 16 October 1996, para 92.

⁸⁵ Inter-American Commission on Human Rights, Annual Report of the Office of the Special Rapporteur for Freedom of Expression, Chapter III, 30 December 2009, OEA/Ser.L/V/II.Doc 51, para 195.

⁸⁶ While the overwhelming focus of international humanitarian law with respect to journalists and media workers is upon their status as protected civilians, it is important to note that if a journalist incites others to commit acts of genocide, violence or grave breaches of international humanitarian law, he or she may legitimately be subject to prosecution; International Criminal Tribunal for Rwanda, case No ICTR-99-52-T, *Prosecutor v Nahimana, Barayagwiza and Ngeze*, Judgement of 3 December 2003. Security Council Resolution 1738 expressly “condemns incitement to violence against civilians in armed conflict” and “further reaffirms the need to bring to justice ... individuals who incite such violence, and indicates its willingness, when authorizing missions, to consider, where appropriate, steps in response to media broadcast inciting genocide, crimes against humanity and serious violations of international humanitarian law,” a position endorsed by the UN Special Rapporteur on extrajudicial, summary or arbitrary executions. See UN Security Council Resolution 1738 (2006), 23 December 2006, S/RES/1738 (2006) para 4 and Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions to the Human Rights Council, Christof Heyns, 10 April 2012, A/HRC/20/22, para 67.

⁸⁷ Inter-American Commission on Human Rights, Report No 38/97, Case 10.548, *Hugo Bustíos Saavedra v Perú*, 16 October 1997, para 61.

⁸⁸ Inter-American Commission on Human Rights, Report No 38/97, Case 10.548, *Hugo Bustíos Saavedra v Perú*, 16 October 1997, para 61.

⁸⁹ Inter-American Commission on Human Rights, Report No 38/97, Case 10.548, *Hugo Bustíos Saavedra v Perú*, 16 October 1997, paras 76 – 77.

⁹⁰ Inter-American Commission on Human Rights, Report No 38/97, Case 10.548, *Hugo Bustíos Saavedra v Perú*, 16 October 1997, para 73.

27. Consequently, it indicated that the State must provide them with the greatest protection possible in order for them to be able to exercise their right to freedom of expression in a way that satisfies society's right to be adequately informed.⁹¹

b. Confidentiality of sources

28. The work of journalists is potentially highly useful in providing evidence for cases against the alleged perpetrators of international crimes committed during situations of armed conflict. The pressure upon journalists to reveal their sources is thus intense in the context of criminal trials concerning war crimes committed during hostilities. Yet states have obligations to preserve the journalistic privilege to protect the confidentiality of their sources even during times of armed conflict.⁹² The Council of Europe's Committee of Ministers Recommendation No R (96) 4 on the protection of journalists in situations of conflict and tension of May 1996 expressly provides that states should protect the confidentiality of sources during situations of conflict.⁹³

29. In *Prosecutor v Talic*, the International Criminal Tribunal for the former Yugoslavia held that war correspondents generally enjoy qualified testimonial privilege.⁹⁴ The tribunal held that correspondents could be subpoenaed if a two-part test was fulfilled. It must be shown that: first, the evidence sought would be of "direct and important value in determining a core issue in the case"; and second, the evidence sought could not "reasonably be obtained elsewhere".⁹⁵ In coming to this decision, the tribunal considered that:

... society's interest in protecting the integrity of the newsgathering process is particularly clear and weighty in the case of war correspondents. Wars necessarily involve death, destruction, and suffering on a large scale and, too frequently, atrocities of many kinds ... In war zones, accurate information is often difficult to obtain and may be difficult to distribute or disseminate as well. The transmission of that information is essential to keeping the international public informed about matters of life and death. It may also be vital to assisting those who would prevent or punish the crimes under international humanitarian law that fall within the jurisdiction of this Tribunal ...The Appeals Chamber readily agrees with the Trial Chamber that war correspondents "play a vital role in bringing to the attention of the international community the horrors and reality of conflict." ... In view of these reasons, the Appeals Chamber considers that war correspondents do serve a public interest.⁹⁶

30. The Appeal Chamber decided that

compelling war correspondents to testify before the International Tribunal on a routine basis may have a significant impact upon their ability to obtain information and thus their ability to inform the public on issues of general concern. The Appeals Chamber will not unnecessarily hamper the work of professions that perform a public interest.⁹⁷

⁹¹ IACHR, Report No 38/97, Case 10.548, *Hugo Bustíos Saavedra v Perú*, 16 October 1997, para 75.

⁹² Ben Saul, "The International Protection of Journalists in Armed Conflict and Other Violent Situations" (2008) 14(1) *Australian Journal of Human Rights* 99 – 140, 126 – 127.

⁹³ Council of Europe Committee of Ministers, Recommendation No R (96) 4 on the protection of journalists in situations of conflict and tension, 3 May 1996, Principle 5.

⁹⁴ International Criminal Tribunal for the former Yugoslavia, Case No IT-99-36-AR73.9 *Prosecutor v. Radoslav Brdjanin and Momir Talic*, Decision on interlocutory appeal, 11 December 2002. The tribunal defined war correspondents as "individuals who, for any period of time, report (or investigate for the purposes of reporting) from a conflict zone on issues relating to the conflict", at para 29.

⁹⁵ International Criminal Tribunal for the former Yugoslavia, Case No IT-99-36-AR73.9 *Prosecutor v. Radoslav Brdjanin and Momir Talic*, Decision on interlocutory appeal, 11 December 2002, para 50.

⁹⁶ International Criminal Tribunal for the former Yugoslavia, Case No IT-99-36-AR73.9 *Prosecutor v. Radoslav Brdjanin and Momir Talic*, Decision on interlocutory appeal, 11 December 2002, para 36.

⁹⁷ International Criminal Tribunal for the former Yugoslavia, Case No IT-99-36-AR73.9 *Prosecutor v. Radoslav Brdjanin and Momir Talic*, Decision on interlocutory appeal, 11 December 2002, para 44.

4. Role of non-state actors

31. Security Council Resolution 1738 of 2006 condemns deliberate attacks against journalists and media workers in situations of armed conflict and calls upon all “parties to put an end to such practices” and “comply fully” with their international obligations on “the protection of civilians in armed conflict, including journalists, media professionals and associated personnel.”⁹⁸ It urges “States *and all other parties to do their utmost to prevent violations of international law*” (emphasis added) against such civilians, while stressing that it is “the responsibility of States to comply with the relevant obligations under international law to end impunity and to prosecute those responsible for serious violations of international humanitarian law.”⁹⁹ Given that the Geneva Conventions and Additional Protocols contain clear obligations for states – including the obligation to provide instruction in international humanitarian law to armed forces¹⁰⁰ – but non-state actors are not formally bound to respect the rules contained in them, the Security Council’s recommendation to “all other parties” besides states is significant. In this regard, in his 2012 report to the Human Rights Council, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions recommended that “non-state actors” should respect “the obligations they incur in terms of international humanitarian law during armed conflict, also towards journalists”.¹⁰¹
32. Finally, the UN Plan of Action recommended specific initiatives to shore up protections for journalists’ safety “in conflict zones”, notably through “the creation of so-called ‘media corridors’ in close cooperation with UN staff on the ground”.¹⁰²

V. INTERNATIONAL AND REGIONAL HUMAN RIGHTS LAW SOURCES

1. General considerations

a. Definition of journalist

33. Although the core international and regional human rights treaties do not distinguish journalists as a category of protected persons like the First Additional Protocol to the Geneva Conventions, international and regional human rights authorities do regularly take account of the status of an individual as a journalist in determining the scope and nature of states’ obligations in relation to such a person under international and regional human rights law. The question of “who can be classified as a journalist?” is significant not only because certain rights and privileges flow from the title of “journalist”, but also certain individuals may be targeted by virtue of playing or being identified with that role.¹⁰³ Yet giving a response to this question today may seem a challenge because of the changing media landscape. The rise of the Internet over the past two decades has radically transformed the media and the practice of journalism, with news media concentrating on promoting their online presence than their hard copy distribution, and featuring users’ comments to articles and own contributions alongside those of professional journalists. News sites, online news aggregators, blogs

⁹⁸ UN Security Council Resolution 1738 (2006), 23 December 2006, S/RES/1738 (2006) paras 1 and 5.

⁹⁹ UN Security Council Resolution 1738 (2006), 23 December 2006, S/RES/1738 (2006) paras 6 and 7.

¹⁰⁰ Articles 47, 48, 127, and 144 of Convention (IV) relative to the Protection of Civilian Persons in Time of War, 12 August 1949 and Article 83 of Protocol Additional to the Geneva Conventions and relating to the Protection of Victims of International Armed Conflicts (Protocol I) 1977.

¹⁰¹ Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions to the Human Rights Council, Christof Heyns, 10 April 2012, A/HRC/20/22, para 136.

¹⁰² UNESCO, International Programme for the Development of Communication (IPDC), *UN Plan of Action on the Issue of the Safety of Journalists and the Issue of Impunity*, April 2012, CI-12/CONF.202/6 at point 5.24.

¹⁰³ Christof Heyns and Sharath Srinivasan, “Protecting the Right to Life of Journalists: the Need for a Higher Level of Engagement” 36 (2013) *Human Rights Quarterly* 304 – 332, 307.

and social networks have come to dominate the dissemination of information. In this climate, an ever increasing constituency of bloggers and so-called “citizen journalists” are able to generate content.¹⁰⁴

34. In the absence of any treaty law directly defining who is a journalist, international and regional human rights bodies have adopted a broadly functional, albeit not identical, approach to the notion. In his report of June 2012, the Special Rapporteur on freedom of opinion and expression, Frank La Rue said that journalists were “defined by their function and service”. He stated:

[J]ournalists are individuals who observe and describe events, document and analyse events, statements, policies, and any propositions that can affect society, with the purpose of systematizing such information and gathering of facts and analyses to inform sectors of society or society as a whole. Such a definition of journalists includes all media workers and support staff, as well as community media workers and so-called “citizen journalists” when they momentarily play that role.¹⁰⁵

35. The Human Rights Committee has preferred to focus on the practice of journalism rather than the role of journalist. In General Comment 34 interpreting states obligation under Article 19 of the ICCPR, the committee asserted that journalism is:

a function shared by a wide range of actors, including professional full-time reporters and analysts, as well as bloggers and others who engage in forms of self-publication in print, on the internet or elsewhere ...¹⁰⁶

36. The committee’s approach to journalism is notably broader than the influential definition of “journalist” provided by a Recommendation of Council of Europe’s Committee of Ministers from 2000. This states:

term ‘journalist’ means any natural or legal person who is regularly or professionally engaged in the collection and dissemination of information to the public via any means of mass communication.¹⁰⁷

37. In 2011, the Committee of Ministers issued a recommendation urging Member States to “adopt a new, broad notion of the media” to recognise that “the scope of media actors has enlarged as a result of new forms of media in the digital age”.¹⁰⁸ The recommendation goes beyond the notion of journalist or journalism in explaining the actors encompassed by that new approach to the concept of the media. The media includes:

all actors involved in the production and dissemination, to potentially large numbers of people, of content (for example information, analysis, comment, opinion, education, culture, art and entertainment in text, audio, visual, audiovisual or other form) and applications which are designed to facilitate interactive mass communication (for example social networks) or other content-based large-scale interactive experiences (for example online games), while retaining (in all these cases) editorial control or oversight of the contents.¹⁰⁹

¹⁰⁴ On the key global trends and challenges concerning the Internet and freedom of expression, see: Human Rights Council, Report of the Special Rapporteur to the Human Rights Council on key trends and challenges to the right of all individuals to seek, receive and impart information and ideas of all kinds through the Internet, 16 May 2011 A/HRC/17/27; General Assembly, Report of the Special Rapporteur to the General Assembly on the right to freedom of opinion and expression exercised through the Internet, 10 August 2011, A/66/290.

¹⁰⁵ Human Rights Council, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, A/HRC/20/17, 4 June 2012.

¹⁰⁶ Human Rights Committee, General Comment No 34 on Article 19 on freedom of opinion and expression, CCPR/C/GC/34, 11 September 2011, para 44. For commentary on the general comment, see Michael O’Flaherty, “Freedom of Expression: Article 19 of the International Covenant on Civil and Political Rights and the Human Rights Committee’s General Comment No 34” (2012) 12(4) *Human Rights Law Review* 627 – 54.

¹⁰⁷ Council of Europe Committee of Ministers, Recommendation No R (2000) 7 on the right of journalists not to disclose their sources of information, adopted 8 March 2000.

¹⁰⁸ Council of Europe Recommendation CM/Rec (2011)7, Committee of Ministers to Member States on a new notion of media, adopted 21 September 2011; Council of Europe Committee of Ministers Declaration on the protection of journalism and safety of journalists and other media actors, 30 April 2014.

¹⁰⁹ Council of Europe Recommendation CM/Rec (2011)7, Committee of Ministers to Member States on a new notion of media, adopted 21 September 2011 at para 7.

38. The Recommendation presents a detailed set of criteria and related indicators to be taken into account when “considering if particular activities, services or actors ought to be regarded as media” and advocates a “graduated and differentiated approach according to the part that media services play in content production and dissemination processes”.¹¹⁰ Significantly, the 2011 recommendation states that “bloggers should only be considered media *if they fulfil the criteria to a sufficient degree*” (emphasis added). This more restrictive language concerning bloggers clearly lies in tension with the definitions of journalist and journalism offered by the UN Special Rapporteur on freedom of opinion and expression as well as the Human Rights Committee.¹¹¹

39. Notwithstanding the differences and overlap between the various meanings given for terms from journalist and journalism to the media, it is important to stress that the protections under international and regional human rights law to journalists who are attacked or threatened should be applied to media workers more generally, particularly those who perform the function of a “public watchdog”. In this regard, the recent “Declaration on the protection of journalism and safety of journalists and other media actors” by the Committee of Ministers of the Council of Europe deals with journalists and other media actors concurrently.¹¹² The declaration, which was adopted in April 2014, emphasises that the alarming situation of attacks and impunity:

is not exclusively limited to professional journalists and other media actors ... Those at risk also include others who contribute to inform the public debate and persons performing journalistic activity or public watchdog functions.¹¹³

40. In this aspect, this Declaration draws from the position of the European Court of Human Rights in *Társaság a Szabadságjogokért v Hungary* in which the court recognised that the “public watchdog” role is performed by others in society, besides the media.¹¹⁴ In this case, the court recognised that it was necessary to apply “the most careful scrutiny [of] measures taken by the national authority capable of discouraging the participation in the public debate on matters of legitimate public concern.”¹¹⁵ In recognition of “civil society’s important contribution to the discussion of public affairs”, a non-governmental organisation involved in, for instance, human rights litigation may also serve to inform public debate and may constitute a “social watchdog”.¹¹⁶ The principle that a “non-governmental organisation involved in matters of public interest is exercising a role as a public watchdog of similar importance to that of the press” has been reiterated in the subsequent cases of *Animal Defenders International v the United Kingdom*¹¹⁷ and *Youth Initiative for Human Rights v Serbia*¹¹⁸.

¹¹⁰ Ibid, Annex, para 9 and 7. These criteria are to be applied flexibly and encompass such benchmarks as: the intent to act as media (indicators: self-labelling; working methods; commitment to professional media standards; practical arrangements for mass communication); professional standards (indicators: commitment; compliance procedures; complaints procedures; asserting prerogatives, rights or privileges); and public expectation (indicators: availability; pluralism and diversity; reliability; respect of professional and ethical standards; and accountability and transparency. Ibid, Annex, criteria 1, 4 and 6.

¹¹¹ Ibid, Annex, para 41. ARTICLE 19 takes issue with this position, stating “[w]hile professed adherence to a set of professional standards may be a helpful indicator of whether an individual is engaged in media activity, it should not be regarded as a necessary condition. The activity of disseminating information in the public interest is not something that should require membership or adherence to some established code of conduct”; ARTICLE 19, *The Right to Blog*, Policy Brief, May 2013.

¹¹² Council of Europe Committee of Ministers Declaration on the protection of journalism and safety of journalists and other media actors, 30 April 2014.

¹¹³ Council of Europe Committee of Ministers Declaration on the protection of journalism and safety of journalists and other media actors, 30 April 2014 at para 2.

¹¹⁴ European Court of Human Rights, *Társaság a Szabadságjogokért v Hungary*, Application No 37374/05, judgment of 14 April 2009.

¹¹⁵ European Court of Human Rights, *Társaság a Szabadságjogokért v Hungary*, Application No 37374/05, judgment of 14 April 2009, paras 26 and 27. See also European Court of Human Rights, *Bladet Tromsø and Stensaas v. Norway*, Application No 21980/83, Judgment of 20 May 1999 (Grand Chamber), para 64; and European Court of Human Rights, *Jersild v. Denmark*, Application No 15890/89, 23 September 1994, para 35.

¹¹⁶ European Court of Human Rights, *Társaság a Szabadságjogokért v Hungary*, Application No 37374/05, judgment of 14 April 2009, para 27. See also European Court of Human Rights, *Steel and Morris v UK*, Application No 68416/01, judgment of 15 February 2005 at para 89.

¹¹⁷ European Court of Human Rights, *Animal Defenders International v the United Kingdom*, Application No 48876/06, judgment of 25 June 2013 at para 103.

41. As a consequence of this position, such organisations should have the same protections of the Convention as the press.¹¹⁹ The European Court of Human Rights has held that any barriers to accessing public interest information might dissuade journalists and media workers, but also those “working in related fields” from continuing their investigations and, consequently, negate “their vital role as ‘public watchdogs’”.¹²⁰
42. It is also relevant to note that while the Human Rights Committee has also recognised that journalists in particular are subjected to “threats, intimidation and attacks” for reasons related to their work, it has also drawn attention to similar risks faced by others “who engage in the gathering and analysis of information on the human rights situation and who publish human rights-related reports, including judges and lawyers.”¹²¹

b. The importance of journalists for a democratic society

43. The fundamental connection between the freedom of expression, on the one hand, and democratic values has been underscored on many occasions by international and regional human rights authorities. The Human Rights Committee in General Comment No 34 stated its view that the freedoms of opinion and expression are not only “indispensable conditions for the full development of the person,” but “they are essential for any society” and “constitute the foundation stone for every free and democratic society.”¹²² Moreover, according to the committee, freedom of expression “is a necessary condition for the realization of the principles of transparency and accountability that are, in turn, essential for the promotion and protection of human rights”.¹²³ As the European Court of Human Rights stated in the seminal case of *Handyside v UK* in 1976, “[f]reedom of expression constitutes one of the essential foundations of such a society, one of the basic conditions for its progress and for the development of every man.”¹²⁴ For its part, the Inter-American Court in its Advisory Opinion echoed this position in 1985 in *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, stating that freedom of expression is “cornerstone upon which the very existence of a democratic society rests” and that it “is indispensable for the formation of public opinion”.¹²⁵ As a result, “it can be said that a society that is not well informed is not a society that is truly free.”¹²⁶
44. International and regional human rights authorities have also emphasised the importance of freedom of expression for the media on numerous occasions. The Human Rights Committee’s General Comment 34 distinguishes the importance of the media, especially in relation to political reporting, stating:

A free, uncensored and unhindered press or other media is essential in any society to ensure freedom of opinion and expression and the enjoyment of other Covenant rights. It constitutes one of the cornerstones of a democratic society. The

¹¹⁸ European Court of Human Rights, *Youth Initiative for Human Rights v Serbia*, Application No 48105/08, judgment of the Grand Chamber of 22 April 2013 at para 20.

¹¹⁹ European Court of Human Rights, *Társaság a Szabadságjogokért v Hungary*, Application No 37374/05, judgment of 14 April 2009, para 27.

¹²⁰ European Court of Human Rights, *Társaság a Szabadságjogokért v Hungary*, Application No 37374/05, judgment of 14 April 2009, para 38.

¹²¹ Human Rights Committee, General Comment No 34 on Article 19 on freedom of opinion and expression, CCPR/C/GC/34, 11 September 2011, para 23.

¹²² Human Rights Committee, General Comment No 34 on Article 19 on freedom of opinion and expression, CCPR/C/GC/34, 11 September 2011, para 2.

¹²³ Human Rights Committee, General Comment No 34 on Article 19 on freedom of opinion and expression, CCPR/C/GC/34, 11 September 2011, para 3.

¹²⁴ European Court of Human Rights, *Handyside v UK*, Application No 5493/72, Judgment 7 December 1976 at para 49.

¹²⁵ Inter-American Court of Human Rights, *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Articles 13 and 29 American Convention on Human Rights), Advisory Opinion OC-5/85 of 13 November 1985, Series A No 5, para 70.

¹²⁶ Inter-American Court of Human Rights, *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Articles 13 and 29 American Convention on Human Rights), Advisory Opinion OC-5/85 of 13 November 1985, Series A No 5, para 70. See also Inter-American Court of Human Rights, *Case of “The Last Temptation of Christ” Case (Olmedo Bustos et al) v Chile*, Judgment of 5 February 2001, para 68.

Covenant embraces a right whereby the media may receive information on the basis of which it can carry out its function. The free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion. The public also has a corresponding right to receive media output.

45. The Inter-American Court has held in such cases as *Ivcher Bronstein v Peru* and in *Herrera Ulloa v Costa Rica* that:

journalists who work in the media should enjoy the necessary protection and independence to exercise their functions to the fullest, because it is they who keep society informed, an indispensable requirement to enable society to enjoy full freedom and for public discourse to become stronger.¹²⁷

46. The jurisprudence of the regional human rights courts has thus far focussed upon the particular importance of the print media, online media being a relatively recent phenomenon. The European Court of Human Rights has referred on numerous occasions to “the pre-eminent role of the *press* in a State governed by the rule of law” (emphasis added) or in a democratic society specifically.¹²⁸ In *Jersild v Denmark*, the court has also indicated that audio-visual media plays a “vital ‘public watchdog’ role” and has “much more immediate and powerful effect than the print media”.¹²⁹ Yet the court has for several years recognised that the Internet provides a forum for debate for ordinary citizens as well as well as journalists, and “which in modern times has no less powerful an effect than the print media.”¹³⁰ Moreover, in *Yildirim v Turkey*, the European Court of Human Rights emphasised that:

the Internet has now become one of the principal means by which individuals exercise their right to freedom of expression and information, providing as it does essential tools for participation in activities and discussions concerning political issues and issues of general interest.¹³¹

47. Journalists and media workers, whether working for on-line or off-line media outlets, play an essential role in a democracy, as “public watchdogs” conveying information and ideas of public interest to the wider society.¹³² Attacks on journalists and media workers therefore constitute attacks on the function of journalism itself in a democracy. As the Inter-American Court of Human Rights in *Vélez Restrepo and Family v. Colombia*, stated “journalism can only be exercised freely when those who carry out this work are not victims of threats or physical, mental or moral attacks or other acts of harassment.”¹³³ At the same time, such attacks also constitute violations of their individual rights to freedom of expression, but also interfere with the rights of other individuals in societies to seek and receive all types of information and ideas.¹³⁴ Given the important “social role” of journalists and media workers, any

¹²⁷ Inter-American Court of Human Rights Case of *Ivcher Bronstein v Peru*, Judgment of 6 February 2001 Series C No. 74, para 150; Inter-American Court of Human Rights Case of *Herrera, Ulloa v. Costa Rica*, Judgment of 2 July 2004 Series C No. 107, para 119.

¹²⁸ See, for example, European Court of Human Rights, *MGN v UK*, Application No 39401/04, Judgment of 18 January 2001 at para 141; European Court of Human Rights, *Flux v Moldova*, Application No 28702/03, Judgment of 12 November 2007 at para 43; European Court of Human Rights, *Castells v Spain*, Application No 11798/85, Judgment of 23 April 1992 at para 43; European Court of Human Rights, *Thorgeir Thorgeirson v Iceland*, Application No 13778/88, Judgment of 25 June 1992 at para 63.

¹²⁹ European Court of Human Rights, *Jersild v Denmark*, Application No 15890/8, Judgment of 23 September 1994, para 31; European Court of Human Rights, *Observer and Guardian v the United Kingdom*, Application No 13585/88, Judgment of 26 November 1991, para 59; European Court of Human Rights, *The Sunday Times v the United Kingdom (no 2)*, Application No 13166/87, Judgment of 26 November 1991, at para 50.

¹³⁰ European Court of Human Rights, *Fatullayev v Azerbaijan*, Application No 40984/05, Judgment of 22 April 2010 at para 95.

¹³¹ European Court of Human Rights, *Yildirim v Turkey*, Application No 3111/10, Judgment of 18 December 2012 at para 54.

¹³² This paper does not address the ethical duties and responsibilities of journalists and media workers in exercising their freedom of expression. See Philip Leach, “The principles which can be drawn from the case-law of the European Court of Human Rights relating to the protection and safety of journalists and journalism”, Report prepared for Council of Europe Conference of Ministers responsible for Media and Information Society, Freedom of Expression and Democracy in the Digital Age, *Freedom of Expression and Democracy in the Digital Age: Opportunities, Rights and Responsibilities*, Belgrade 7 – 8 November 2013, MCM (2013) 012 CDMSI (2013) Misc3 at paras 16-20.

¹³³ Inter-American Court of Human Rights, *Vélez Restrepo and Family v Colombia*, Judgment of 3 September 2012, para 209.

¹³⁴ Inter-American Commission on Human Rights, Office of the Special Rapporteur for Freedom of Expression, Special Study on the status of Investigations into the Murder of Journalists during the 1995-2005 period for reasons related to their work in journalism OEA/Ser.L/V/II.131 Doc 35, 8 March 2008, para 9.

attacks on them may be deemed as attacks “on the foundations of the human rights project and on informed society as a whole,” as indicated by the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Christoph Heyns.¹³⁵ The protection of journalists therefore deserves “special attention” according to the Special Rapporteur.¹³⁶

c. Positive obligations to protect the rights of journalists

48. All branches of the state – the executive, the legislative and the judiciary – and at all levels – national, regional or local – owe obligations to secure human rights within the jurisdiction of the state.¹³⁷ State authorities are required to protect individuals’ rights against arbitrary interference by public authorities: a state is responsible for all the acts and omissions of its agents in the exercise of their duties, notwithstanding the intention of those relevant state agents.¹³⁸ Put differently, a state is responsible for active and intentional violations of rights by public authorities, as well as the “support or tolerance by public authorities” of violations.¹³⁹ In relation to the right to life, this means that the law must, at minimum, “strictly control and limit the circumstances in which a person may be deprived of his life by such authorities.”¹⁴⁰

49. Crucially, however, states are also required to positively act to take the necessary steps to ensure effective protection of human rights amongst individuals, including by preventing the interference in individuals’ rights by private or non-state actors.¹⁴¹ Accordingly, states may “be found responsible for acts of private individuals” in fulfilment of their international human rights obligations.¹⁴² With respect to the positive obligations, the Inter-American Court of Human Rights has held:

[...] the obligation to respect human rights between individuals should be taken into consideration. That is, the positive obligation of the State to ensure the effectiveness of the protected human rights gives rise to effects in relation to third parties (*erga omnes*). This obligation ... must be respected by both the public authorities and by individuals with regard to other individuals.¹⁴³

50. The European Court of Human Rights has recognised that a state may have positive obligations under Article 2 of the ECHR to protect the right to life. In *McCann and others v UK*, the court held that a general prohibition on arbitrary killing by state agents was insufficient to secure protection of the right to life; the obligations under the ECHR also required “some form of effective official investigation when

¹³⁵ Human Rights Council, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christoph Heyns, 10 April 2012, A/HRC/20/22 at para 24. Heyns and Srinivasan further state: “... Freedom of expression is an individual as well as a collective right and journalists provide a vital connective tissue that enables this. They are essential for a robust public sphere open to all that fosters reasoned debate and democratic accountability. As such, protection of journalists does not inherently promote a specific ideology instead it preserves space for different voices to be heard largely irrespective of what they have to say. When the spectre of attacks forces journalists to retreat, this vital sphere for the protection of reason and rights is withered”; Christoph Heyns and Sharath Srinivasan, “Protecting the Right to Life of Journalists: The Need for a Higher Level of Engagement” (2013) 36 *Human Rights Quarterly* 304 – 332, at 306.

¹³⁶ *Ibid.*

¹³⁷ In connection with freedom of expression, see: Human Rights Committee, General Comment No 34 on Article 19 on freedom of opinion and expression, CCPR/C/GC/34, 11 September 2011, para 7.

¹³⁸ See generally, in the context of the ECHR, European Court of Human Rights Research Division, “Positive obligations on member states under Article 10 to protect journalists and prevent impunity”, Research Paper, December 2011.

¹³⁹ Inter-American Court of Human Rights, *Case of the “Mapiripán Massacre” v Colombia*, Judgment of 15 September 2005, Series C No 134, para 108 – 111; Inter-American Court of Human Rights, *Case of the “Pueblo Bello Massacre” v Colombia*, Judgment of 31 January 2006, Series C No 140, para 111.

¹⁴⁰ Human Rights Committee, General Comment No 6 on the Right to Life (2003), UN Doc HRI/GEN/1/Rev.6 para 3.

¹⁴¹ Human Rights Committee, General Comment No 34 on Article 19 on freedom of opinion and expression, CCPR/C/GC/34, 11 September 2011, para 7; OAS, Inter-American Commission on Human Rights, *Violence against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection and Prosecution of Perpetrators*, OEA/Ser.L/V/II, CIDH/RELE/INF.12/13, 31 December 2013 at p 22.

¹⁴² Inter-American Court of Human Rights, *Case of the “Mapiripán Massacre” v Colombia*, Judgment of 15 September 2005, Series C No 134, para 111 – 112; Inter-American Court of Human Rights, *Case of the “Pueblo Bello Massacre” v Colombia*, Judgment of 31 January 2006, Series C No 140, para 111.

¹⁴³ Inter-American Court of Human Rights, *Judicial Condition and Rights of Undocumented Migrants*, Advisory Opinion OC-18/03 of 17 September 2003, Series A No. 18, para 140.

individuals have been killed as a result of the use of force by, inter alia agents of the State.”¹⁴⁴ In *Osman v UK*, the court also held that a state is, as a result of Article 2 of the ECHR, bound to “take appropriate steps to safeguard the lives of those within its jurisdiction” by putting in place an appropriate framework of criminal justice, including legal provisions and “law enforcement machinery for the prevention, suppression and sanctioning of breaches of such provisions”.¹⁴⁵ Thus, the right to life may imply “a positive obligation on the authorities to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual”.¹⁴⁶ According to the court:

it is sufficient for an applicant to show that the authorities did not do all that could be reasonably expected of them to avoid a real and immediate risk to life of which they have or ought to have knowledge. This is a question which can only be answered in the light of all the circumstances of any particular case.

51. In *Ozgur Gundem v Turkey*, a case concerning pro-PKK newspaper journalists and media workers who had been subjected to a campaign of violence and intimidation, the European Court of Human Rights highlighted the importance of positive measures for the exercise of freedom of expression, as well as considerations which inform the scope of such positive obligations on the state. The court stated:

Genuine, effective exercise of this freedom does not depend merely on the State's duty not to interfere, but may require positive measures of protection, even in the sphere of relations between individuals ... In determining whether or not a positive obligation exists, regard must be had to the fair balance that has to be struck between the general interest of the community and the interests of the individual, the search for which is inherent throughout the Convention. The scope of this obligation will inevitably vary, having regard to the diversity of situations obtaining in Contracting States, the difficulties involved in policing modern societies and the choices which must be made in terms of priorities and resources. Nor must such an obligation be interpreted in such a way as to impose an impossible or disproportionate burden on the authorities ...¹⁴⁷

52. The state’s positive obligations will be discussed further the below, especially with respect to the duties to protect and prevent.

2. The Duty to Investigate, Prosecute and Punish

a. Impunity and the “chilling effect”

53. The Special Rapporteurs on extra-judicial, summary and arbitrary executions and on freedom of opinion and expression have highlighted the damaging effects of allowing attacks on journalists and media workers to continue with impunity, without any accountability. The Special Rapporteur on extra-judicial, summary and arbitrary executions, Christof Heyns, stated that impunity is “widely recognised as one of the main causes of the continued killing of journalists”.¹⁴⁸ The Special Rapporteur on freedom of opinion and expression, Frank La Rue, further analysed the process by which impunity leads to more attacks being perpetrated. He stated:

One of biggest challenges to ensuring the protection of journalists is impunity or the failure to bring to justice the perpetrators of human rights violations. In this regard, the Special Rapporteur has on many occasions stressed that impunity for those who attack and/or kill journalists is a central obstacle to guaranteeing the protection of journalists and press freedom, as it emboldens perpetrators as well as would-be perpetrators to attack journalists with no legal consequences. Indeed, impunity is one, if not the main cause of the unacceptably high number of journalists who are

¹⁴⁴ European Court of Human Rights, *McCann and others v UK*, Application No 18984/91, Judgment of 27 September 1995 (Grand Chamber) at para 161.

¹⁴⁵ European Court of Human Rights, *Osman v UK*, Application No 23452/94, Judgment of 28 October 1998 (Grand Chamber) at para 115.

¹⁴⁶ European Court of Human Rights, *Osman v UK*, Application No 23452/94, Judgment of 28 October 1998 (Grand Chamber) at para 115.

¹⁴⁷ European Court of Human Rights, *Ozgur Gundem v Turkey*, Application No 23144/93, Judgment of 16 March 2000 at para 43.

¹⁴⁸ Human Rights Council, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, 10 April 2012, A/HRC/20/22 at para 43.

attacked or killed every year. States must recognize that in cases of violence against journalists, impunity generates more violence in a vicious cycle.¹⁴⁹

54. Impunity has been defined by the Inter-American Court of Human Rights as “the overall lack of investigation, tracking down, capture, prosecution and conviction of those responsible for violating the rights protected by the American Convention”.¹⁵⁰ Impunity as the consequence of “the absence of a complete investigation, leading to the criminal punishment of all those responsible for the murder of a journalist” may also be viewed as, in and of itself, a violation of the right to the freedom of expression “for the intimidating effect it has on the impunity of citizens”.¹⁵¹ In this case, *Vélez Restrepo and Family v. Colombia*, following the Inter-American Commission’s decision, the Inter-American Court emphasised that the attack against Mr Restrepo by soldiers while he was covering a demonstration, and its widespread dissemination in the Colombian media, had a negative impact on other journalists who had to cover events of this type, who could fear similar acts of violence”.¹⁵² Besides having a “chilling effect” on other journalists, it also intimidated other individuals dissuading them from speaking out and prevented the free flow of information about the armed forces controlling the demonstration from reaching possible recipients, namely the public.¹⁵³ The Inter-American Court therefore found a violation of Article 13 of the ACHR on freedom of expression partly because of the failure by the Colombian state authorities to effectively investigate earlier violence against the journalist, which resulted in subsequent threats and harassment against him.¹⁵⁴
55. By taking steps to “prevent, investigate, identify and punish” the perpetrators of human rights violations, states should ensure that there are adequate and effective mechanisms of accountability to break this “vicious circle” of violence and combat the culture of impunity surrounding violence against journalists.¹⁵⁵ Speedy action to punish all perpetrators is the way in which a state can send “a strong message to society that there will be no tolerance for those who engage in such a grave violation of the right to freedom of expression.”¹⁵⁶ International human rights authorities and courts have taken very seriously states’ obligations towards ensuring that investigations into violence against journalists and media workers are properly undertaken.¹⁵⁷

¹⁴⁹ Human Rights Council, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, 4 June 2012, A/HRC/20/17 at para 65.

¹⁵⁰ Inter-American Court of Human Rights, *Constitutional Court v Peru*, 31 January 2001, Series C No 71, para 123; Inter-American Court of Human Rights Case of *Bámaca Velásquez v Guatemala*, 25 November 2000, Series C No 70, para 211.

¹⁵¹ Inter-American Commission on Human Rights, *Luis Gonzalo “Richard” Vélez Restrepo and Family v Colombia*, 23 October 2010, para 136; Inter-American Commission on Human Rights, *Victor Emanuel Oropeza (Mexico)* 19 November 1999, para 47.

¹⁵² Inter-American Court of Human Rights, *Vélez Restrepo and Family v Colombia*, Judgment of 3 September 2012, para 148. See also Inter-American Commission on Human Rights, *Luis Gonzalo “Richard” Vélez Restrepo and Family v Colombia*, 23 October 2010, para 136; Inter-American Commission on Human Rights, *Héctor Félix Miranda v Mexico*, 13 April 1999 para 52; Inter-American Commission on Human Rights, *Victor Manuel Oropeza v Mexico*, 19 November 1999, para 58.

¹⁵³ See also Inter-American Commission on Human Rights, *Luis Gonzalo “Richard” Vélez Restrepo and Family v Colombia*, 23 October 2010, para 136.

¹⁵⁴ Inter-American Court of Human Rights, *Vélez Restrepo and Family v Colombia*, Preliminary Objections, Merits, Reparations and Costs. Judgment of 3 September 2012, Series C No. 248, para 215.

¹⁵⁵ Inter-American Court of Human Rights, *Jvcher-Bronstein v Perú*, Judgment of 6 February 2001, Series C No. 74, para 186.

¹⁵⁶ Inter-American Commission on Human Rights, *Luis Gonzalo “Richard” Vélez Restrepo and Family v Colombia*, 23 October 2010, para 136; See also Inter-American Commission on Human Rights, Report No 50/99. Case 11.739. *Héctor Félix Miranda v Mexico*, 13 April 1999, para 52; Inter-American Commission on Human Rights, Report No 130/99, Case No. 11.740, *Victor Manuel Oropeza v Mexico*, 19 November 1999, para 58.

¹⁵⁷ Domestic mechanisms to combat impunity including in relation to attacks on journalists, notably the International Commission against Impunity in Guatemala have been highlighted by the Special Rapporteur on freedom of opinion and expression. See Human Rights Council, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, A/HRC/20/17, 4 June 2012 at para 113.

b. Duty to investigate

i. General considerations

56. From the perspective of Article 19 of the ICCPR on freedom of expression, *no* attack on a person – including arbitrary arrest, torture, threats to life and killing – may be justified on the basis of that person’s exercise of his or her freedom of expression.¹⁵⁸ When attacks do occur, states have duties to “vigorously investigate in a timely fashion” all such attacks on journalists and media workers and ensure that “the perpetrators [are] prosecuted, and the victims, or, in the case of killings, their representatives, [are] in receipt of appropriate forms of redress,” according to the Human Rights Committee in General Comment No 34.¹⁵⁹ The Human Rights Council has also called upon “states to ensure accountability through the conduct of impartial, speedy and effective investigations into such acts falling within their jurisdiction, and to bring to justice those responsible and to ensure that victims have access to appropriate remedies”.¹⁶⁰
57. These statements, capturing the fundamental tenets concerning states’ duties to investigate attacks on journalists and media workers, derive from international and regional law, including jurisprudence, concerning the so-called “procedural aspect” of the right to life as well as the prohibition on torture, degrading or inhuman treatment.¹⁶¹ Many of these principles are crystallised in *The Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions* recommended by the Economic and Social Council of the UN in 1989.¹⁶² These principles provide that investigations into extrajudicial killings should be “thorough, prompt and impartial” and conducted by independent bodies,¹⁶³ prosecutors should act independently, impartially and expeditiously,¹⁶⁴ and other state authorities should enable prosecutors to act independently and without interference, including, where necessary, by ensuring their safety.¹⁶⁵
58. State authorities should not wait for the family of a murdered journalist to file a complaint before initiating an investigation. They should initiate an investigation of their own accord as soon as they have been informed of the killing as a matter of their obligations under the right to life.¹⁶⁶ In addition, the responsibilities of state institutions to fully and properly investigate every attack against a journalist and prosecute those responsible should not be negated by the fact that in many, if not most, cases the “origin of the acts of violence may not be known”, and may well involve a private actor, as highlighted by the Special Rapporteur on freedom of opinion and expression in 2012.¹⁶⁷ The Inter-American Court of Human Rights has similarly noted that this obligation remains “whatsoever the agent to which the

¹⁵⁸ Human Rights Committee, General Comment No 34 on Article 19 on freedom of opinion and expression, CCPR/C/GC/34, 11 September 2011, para 23.

¹⁵⁹ Human Rights Committee, General Comment No 34 on Article 19 on freedom of opinion and expression, CCPR/C/GC/34, 11 September 2011, para 23. See also Human Rights Committee, General Comment No 6 on Article 6 on the right to life, UN Doc HRI/GEN/1/Rev.6 (1982); Principles on Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, Economic and Social Council Resolution 1989/65 of 24 May 1989, E/1989/89.

¹⁶⁰ Human Rights Council Resolution 21/12 of 27 September 2012, A/HRC/RES/21/12 at para 7.

¹⁶¹ States should also investigate cases of missing and disappeared journalists and media workers which may involve a violation of their right to life. Human Rights Committee, General Comment No 6 on Article 6 on the right to life, UN Doc HRI/GEN/1/Rev.6 (1982), at para 4.

¹⁶² Economic and Social Council, *Principles on Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions*, Economic and Social Council Resolution 1989/65 of 24 May 1989, E/1989/89.

¹⁶³ Economic and Social Council, *Principles on Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions*, Economic and Social Council Resolution 1989/65 of 24 May 1989, E/1989/89 at principles 7 and 9.

¹⁶⁴ Economic and Social Council, *Principles on Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions*, Economic and Social Council Resolution 1989/65 of 24 May 1989, E/1989/89 at principle 5.

¹⁶⁵ Economic and Social Council, *Principles on Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions*, Economic and Social Council Resolution 1989/65 of 24 May 1989, E/1989/89 at principles 12 and 13.

¹⁶⁶ European Court of Human Rights, *Yaşa v Turkey*, Application No 22395/93, Judgment of 2 September 1998 at para 100.

¹⁶⁷ Human Rights Council, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, A/HRC/20/17, 4 June 2012 at para 56.

violation may eventually be attributed, even individuals, because, if their acts are not investigated genuinely, they would be, to some extent, assisted by the public authorities, which would entail the State's international responsibility."¹⁶⁸

59. The following sections indicate some of the key principles concerning the duty to investigate with specific reference to cases concerning attacks on journalists and other media workers. These apply in cases where the journalist or media worker has either been killed or has suffered ill treatment as a result of an attack in violation of provisions on the right to life, under Article 2 of the ECHR, or the prohibition on torture and inhuman or degrading treatment or punishment, under Article 3 of the ECHR, in the European human rights context.

60. In relation to the second category, where the journalist or media worker has been attacked but has survived, a "minimum level of severity" must be reached if the ill-treatment is to fall within the scope of the prohibition on torture and inhuman or degrading treatment or punishment. The European Court of Human Rights has held that "assessment of this minimum level depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim."¹⁶⁹ In this regard, the court considered that the prohibition on inhuman and degrading treatment was breached in *Tekin v Turkey*, the case of a journalist who was held blind-folded in a cold, dark cell and forcibly interrogated in a way that left wounds and bruises on his body.¹⁷⁰

ii. Independence

61. State authorities involved in the investigation of attacks on journalists and the prosecution of perpetrators should be autonomous and independent. In the circumstances where there is the risk of "undue influence" by other state authorities, including the government, investigations should be "moved to a different authority outside of their jurisdiction or sphere of influence (for example, in appropriate cases, to the federal as opposed to the state level)."¹⁷¹ The 2012 Joint Declaration of the international intergovernmental experts on freedom of expression on "Crimes Against Freedom of Expression" stated:

- i. **The investigation should be carried out by a body that is independent from those implicated in the events. This implies both formal hierarchical and institutional independence, and practical arrangements to secure independence.**
- ii. **When there are credible allegations of involvement of State agents, the investigation should be carried out by an authority outside of the jurisdiction or sphere of influence of those authorities, and the investigators should be able to explore all allegations fully.**
- iii. **An effective system should be put in place for receiving and processing complaints regarding investigations by law enforcement officials of crimes against freedom of expression, which is sufficiently independent of those officials and their employers, and which operates in a transparent manner.**
- iv. **Where the seriousness of the situation warrants it, in particular in cases of frequent and recurrent crimes against freedom of expression, consideration should be given to establishing specialised and dedicated investigative units – with sufficient resources and appropriate training to operate efficiently and effectively – to investigate crimes against freedom of expression.¹⁷²**

¹⁶⁸ Inter-American Court of Human Rights, *González et al ('Cotton Field') v México*, Preliminary Objection, Merits, Reparations and Costs, Judgment of 16 November 2009, Series C No. 205 para 291.

¹⁶⁹ European Court of Human Rights, *Najafli v Azerbaijan*, Application No 2594/07, Judgment of 2 October 2012 at para 35.

¹⁷⁰ European Court of Human Rights, *Tekin v Turkey*, Application No 22496/93, Judgment of 9 June 1998 at paras 49 - 54.

¹⁷¹ Human Rights Council, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, 10 April 2012, A/HRC/20/22 at para 113.

¹⁷² Joint Declaration on Crimes Against Freedom of Expression, June 2012.

62. This statement for the principle of independence clearly draws from the jurisprudence of the regional human rights courts. According to the European Court of Human Rights, for instance, the notion of independence means “not only a lack of hierarchical or institutional connection but also a practical independence”.¹⁷³
63. National security or military prosecutors and courts do not meet the criterion of independence where they include the “presence of a military judge whose participation gives rise to legitimate fears that the court may be unduly influenced by considerations which had nothing to do with the nature of the case”, as the European Court of Human Rights held in the already mentioned case of *Kılıç v Turkey*.¹⁷⁴ In that case the court considered that these were “defects [which] undermined the effectiveness of the protection afforded [to the journalist] by the criminal law” and “fostered a lack of accountability of members of the security forces for their actions which ... was incompatible with the rule of law in a democratic society respecting the rights and freedoms guaranteed under the Convention.”¹⁷⁵ Similarly, the Inter-American Court of Human Rights in *Vélez Restrepo and Family v Colombia* reiterated its previous jurisprudence in deciding that the military justice system was “not the competent system to investigate and, as appropriate, prosecute and punish the authors of human rights violations, and that, only soldiers on active duty who have committed crimes or misdemeanors that, owing to their nature, harm juridical rights of a military nature, can be tried by the military justice system.”¹⁷⁶
64. Investigations into attacks on journalists by state agents (such as the police or other state security forces) must be conducted by state agents who operate under a different public authority. In the case of *Najafli v Azerbaijan*, the European Court of Human Rights found violations of Article 3 on the right not to be subjected to inhuman or degrading treatment and Article 10 on freedom of expression in a case of a journalist who was covering an unauthorised demonstration by the opposition held in Baku. Although the journalist was not wearing the blue vest identifying him as a member of the press, he nonetheless was wearing a badge identifying himself as a journalist and he also repeatedly told his police assailants that he was a journalist.¹⁷⁷ Reaffirming the role of the media, the court also held that “reporting on opposition gatherings and demonstrations” is “essential for the development of any democratic society”. Without the possibility to report on such events, “the press would be unable to play its vital role of ‘public watchdog’”.¹⁷⁸ In relation the state’s procedural obligations under Article 3 of the ECHR, the court found that:

the investigating authority delegated a major and essential part of the investigation – identification of the perpetrators of the alleged ill-treatment – to the same authority whose agents had allegedly committed the offence. In this respect, the Court finds it of no real significance that, while the alleged perpetrators were officers of the Riot Police Regiment of the Baku Police Department, it was another police department which was requested to carry out the investigation. What is important is that the investigation of alleged misconduct potentially engaging the responsibility of a public authority and its officers was carried out by those agents’ colleagues, employed by the same public authority. In the Court’s view, in such circumstances an investigation by the police force of an allegation of misconduct by its own officers could not be independent in the present case.

¹⁷³ European Court of Human Rights, *Adali v Turkey*, Application no 38187/97, judgment of 31 March 2005, para 222. See also European Court of Human Rights, *Ergi v Turkey*, Application No 23818/94, judgment of 28 July 1998 paras 83–84.

¹⁷⁴ European Court of Human Rights, *Kılıç v Turkey*, Application No 22492/93, Judgment of 28 March 2000 para 74.

¹⁷⁵ European Court of Human Rights, *Kılıç v Turkey*, Application No 22492/93, Judgment of 28 March 2000 para 75.

¹⁷⁶ Inter-American Court of Human Rights, *Vélez Restrepo and Family v Colombia*, Preliminary Objections, Merits, Reparations and Costs. Judgment of 3 September 2012, Series C No. 248, para 240.

¹⁷⁷ European Court of Human Rights, *Najafli v Azerbaijan*, Application No 2594/07, Judgment of 2 October 2012 at paras 64–65.

¹⁷⁸ European Court of Human Rights. *Case of Najafli v. Azerbaijan*. Application no. 2594/07. Judgment. October 2, 2012 para 66.

iii. Speed

65. As stated in the Joint Declaration on “Crimes Against Freedom of Expression” issued by international intergovernmental experts in 2012, state authorities should “make all reasonable efforts to expedite investigations, including by acting as soon as an official complaint or reliable evidence of an attack against freedom of expression becomes available.”¹⁷⁹ The Special Rapporteur on extrajudicial, summary or arbitrary executions has endorsed *The Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions* in his 2012 report and has urged states to meet their “obligation to conduct prompt and exhaustive investigations into all suspected cases of violations of the right to life of journalists and to identify and bring to justice those responsible.”¹⁸⁰
66. A period of three months between the incidents of violation and the launch of the initial relevant procedural steps contributed to the finding by the European Court of Human Rights that the state had violated its obligation to carry out an effective investigation under the procedural aspect of Article 3 of the ECHR in *Najafli v Azerbaijan*, which concerned a journalist who had been beaten by police.¹⁸¹
67. In *Héctor Félix Miranda v Mexico* the Inter-American Commission on Human Rights decided that a state had violated its obligation to conduct an effective investigation since more than a decade had passed without the mastermind of the crime being identified and prosecuted.¹⁸² Moreover, there were no excuses for this “unreasonably prolonged duration of the investigation”: the commission emphasised that the murder of journalist Héctor Félix Miranda was “not an extremely complex case”, given that the direct perpetrators were quickly tried and convicted, and that there was clear evidence linking them to a potential mastermind.¹⁸³ In *Vélez Restrepo and Family v Colombia*, the Inter-American Commission observed that thirteen years had passed without the Colombian state identifying, trying or punishing any of those responsible for a series of threats and acts of harassment against journalist Richard Velez and members of his family, actions which eventually forced them to flee the country. The commission decided that the investigation was not conducted in a reasonable manner and found a violation of Colombia’s obligations under Article 8.1 of the ACHR on right to a fair trial.¹⁸⁴ Authorities should conduct the investigations quickly, avoiding delays that could result in impunity and infringe judicial protections under the law.¹⁸⁵

iv. Effectiveness

68. Although the obligation to conduct an investigation speedily, promptly or within a reasonable time addresses the effectiveness of such an investigation, the term “effectiveness” embraces other ideas. The 2012 Joint Declaration of the international intergovernmental experts on freedom of expression on Crimes Against Freedom of Expression states the following principles related to the effectiveness of investigations:
- i. **Sufficient resources and training should be allocated to ensure that investigations into crimes against freedom of expression are thorough, rigorous and effective and that all aspects of such crimes are explored properly.**

¹⁷⁹ Joint Declaration on Crimes Against Freedom of Expression, June 2012.

¹⁸⁰ Human Rights Council, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, 10 April 2012, A/HRC/20/22 at paras 44 and 111.

¹⁸¹ European Court of Human Rights, *Najafli v Azerbaijan*, Application No 2594/07, Judgment of 2 October 2013 at paras 49 – 50.

¹⁸² Inter-American Commission on Human Rights, *Héctor Félix Miranda v México*, 13 April 1999, para 11, 30, 32.

¹⁸³ Inter-American Commission on Human Rights, *Héctor Félix Miranda v México*, 13 April 1999, para 31 and 32.

¹⁸⁴ Inter-American Court on Human Rights, *Gómez Palomino v Peru*, Judgment of 22 November 2005, Series C No 136, para 85; Inter-American Court of Human Rights, *Moiwana Community v Suriname*, Judgment 15 June 2005, Series C No 124, para 160.

¹⁸⁵ Inter-American Court on Human Rights, *Case of Gómez Palomino v Peru Case. Merits, Reparations and Costs*, Judgment of 22 November 2005. Series C No. 136, para 85.

- ii. Investigations should lead to the identification and prosecution of all of those responsible for crimes against freedom of expression, including direct perpetrators and instigators, as well as those who conspire to commit, aid and abet, or cover up such crimes.
- iii. Where there is some evidence that a crime which has been committed may be a crime against freedom of expression, the investigation should be conducted with the presumption that it is such a crime until proven otherwise, and relevant lines of enquiry related to the victim's expressive activities have been exhausted.
- iv. Law enforcement bodies should take all reasonable steps to secure relevant evidence and all witnesses should be questioned with a view to ascertaining the truth.
- v. The victims, or in case of death, abduction or disappearance the next-of-kin, should be afforded effective access to the procedure. At the very least the victim or the next-of-kin must be involved in the procedure to the extent necessary to safeguard their legitimate interests. In most instances, this will require giving access to certain parts of the proceedings and also to the relevant documents to ensure participation is effective.
- vi. Civil society organisations should be able to lodge complaints about crimes against freedom of expression – of particular importance in cases involving killings, abductions or disappearances where the next-of-kin are unwilling or unable to do so – and intervene to in the criminal proceedings.
- vii. Investigations should be conducted in a transparent manner, subject to the need to avoid prejudice to the investigation.
- viii. Restrictions on reporting on court cases involving prosecutions of crimes against freedom of expression should be limited to highly exceptional cases where clearly overriding interests prevail over the particularly strong need for openness in such cases.
- ix. In addition to criminal investigations, disciplinary proceedings should be carried out where there is evidence that public officials have committed crimes against freedom of expression in the course of their professional duties.

69. First, effective investigations and prosecutions in response to attacks on journalists and media workers require states to be politically committed to combating impunity in relation to such attacks. In addition, states should to set aside sufficient human and financial resources for gathering and analysing information in order to establish liability and ensure accountability for such actions. Human Rights Council resolution 21/12 on safety of journalists calls upon states to “dedicate necessary resources to investigate and prosecute such attacks”.¹⁸⁶ The Special Rapporteur on freedom of opinion and expression has recommended that “necessary resources must be dedicated to preventing and investigating attacks or bringing those responsible to justice.”¹⁸⁷ The Special Rapporteur on extrajudicial, summary or arbitrary executions was more specific, recommending that “[i]n countries where high incidences of attacks against journalists are reported, the investigations should be carried out by special investigative units with sufficient resources and appropriate training to operate efficiently and effectively.”¹⁸⁸ The Joint Declaration of the international intergovernmental experts on freedom of expression emphasises that “[s]ufficient resources and training should be allocated to ensure that investigations into crimes against freedom of expression are thorough, rigorous and effective and that all aspects of such crimes are explored properly.”¹⁸⁹ It also calls on states to consider “establishing specialised and dedicated investigative units – with sufficient resources and appropriate training to operate efficiently and effectively – to investigate crimes against freedom of expression.”¹⁹⁰

70. Second, any investigation into an attack on a journalist which is limited may be deemed to have been ineffective and therefore in violation of human rights. In *Kılıç v Turkey*, the European Court of Human Rights held that the limited scope and short duration of the investigation into the killing of a journalist pointed to a failure to conduct an effective investigation leading to a violation of the procedural aspect of Article 2 of the ECHR.¹⁹¹ The court indicated that there were a series of inadequacies in the

¹⁸⁶ Human Rights Council Resolution 21/12 of 27 September 2012, A/HRC/RES/21/12 at para 8(e).

¹⁸⁷ Human Rights Council, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, A/HRC/20/17, 4 June 2012 at para 102.

¹⁸⁸ Human Rights Council, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, 10 April 2012, A/HRC/20/22.

¹⁸⁹ Joint Declaration on Crimes Against Freedom of Expression, June 2012.

¹⁹⁰ Joint Declaration on Crimes Against Freedom of Expression, June 2012.

¹⁹¹ European Court of Human Rights, *Kılıç v Turkey*, Application No 22492/93, Judgment of 28 March 2000 paras 83.

investigation, including the failure to make inquiries into the possible targeting of the journalist due to his job as journalist of *Özgür Gündem* or into the possibility of “any collusion by security forces in the incident.”¹⁹²

71. Third, and relatedly, any investigation into an attack on a journalist should be conducted diligently and thoroughly, and in doing so should examine at least the motives of the perpetrators and pursue logical lines of inquiry. State authorities should inquire into the motive behind the attack to determine whether it was related to the journalist’s professional activities. In *Adalı v Turkey*, the European Court of Human Rights did not find it “implausible” that the killing of the journalist critical of the government “was related to his activities as a journalist”.¹⁹³ The court found, however, that the “authorities failed to inquire sufficiently into the motives” behind his killing, including by failing to “investigate the possibility that the murder was politically motivated or had any link with his work as a journalist”.¹⁹⁴ Instead, it seemed that the “responsible authorities already at an early stage of the investigation and on an insufficient basis discarded that possibility” and “no search was conducted on the papers and other belongings of the deceased with a view to finding any evidence which could cast light on the motives behind the killing”.¹⁹⁵

72. The Inter-American Court emphasised the importance of pursuing logical lines of inquiry in linking between the professional work of journalists and their targeting as victims of violence. In *Vélez Restrepo and Family v. Colombia*, the court found the state should have done more to take into account this linkage. It stated:

[t]he State should have undertaken the compliance with its obligations of investigation and protection taking into account the reasonable connection between the attack motivated by the exercise of freedom of expression ... and the subsequent threats and harassment that escalated into an attempted deprivation of liberty.¹⁹⁶

73. The Inter-American Court of Human Rights held that the state authorities had failed to seriously and diligently investigate the attack on a journalist covering a demonstration and subsequent threats and harassments to him and his family.¹⁹⁷ It is interesting to note that, in delivering its judgment, the court emphasises that Mr Vélez Restrepo was beaten both *for* and *whilst* he was undertaking his work – something an effective investigation would have surely identified. The court stated:

Mr. Vélez Restrepo was attacked while he was performing his journalistic tasks as a cameraman for a national news program and that the attack by the soldiers was intended to harm his right to freedom of thought and expression by preventing him from continuing to record the incidents that were taking place ... and to disseminate the images he had recorded ... their purpose was to stop the dissemination of the images recorded by Mr. Velez Restrepo ... Mr. Vélez Restrepo was attacked under the following conditions: he was defenseless and had not acted in any way to justify such an attack; he could be identified as a member of the press by the video camera he was carrying and, moreover, the attack was directed against him with the specific purpose of preventing him from continuing to record what was taking place and to prevent the dissemination of the recording. The Court finds that it is unacceptable to affirm that the attack on a journalist, under these conditions, “was not a deliberate attack” and that it was a “consequence” of the actions taken by the security forces to control the acts of violence that took place at the time.¹⁹⁸

¹⁹² European Court of Human Rights, *Kılıç v Turkey*, Application No 22492/93, Judgment of 28 March 2000 paras 81 – 82.

¹⁹³ European Court of Human Rights, *Adalı v Turkey*, Application No 38187/97, Judgment of 31 March 2005 at para 231.

¹⁹⁴ European Court of Human Rights, *Adalı v Turkey*, Application No 38187/97, Judgment of 31 March 2005 at para 231.

¹⁹⁵ European Court of Human Rights, *Adalı v Turkey*, Application No 38187/97, Judgment of 31 March 2005 at para 231.

¹⁹⁶ Inter-American Court of Human Rights, *Vélez Restrepo and Family v Colombia*, Preliminary Objections, Merits, Reparations and Costs. Judgment of 3 September 2012, Series C No. 248, para 211.

¹⁹⁷ Inter-American Court of Human Rights, *Vélez Restrepo and Family v Colombia*, Preliminary Objections, Merits, Reparations and Costs. Judgment of 3 September 2012, Series C No. 248, para 252.

¹⁹⁸ Inter-American Court of Human Rights, *Vélez Restrepo and Family v Colombia*, Preliminary Objections, Merits, Reparations and Costs. Judgment of 3 September 2012, Series C No. 248, para 142.

74. More generally, the Inter-American Court has indicated that the duty that criminal investigations are conducted diligently means that state authorities should exhaust all logical lines of inquiry. Investigations by state authorities should therefore reflect “the complexity of the facts, the context in which they occurred and the systematic patterns that explain why the events occurred,” ensuring that there are “no omissions in gathering evidence or in the development of logical lines of investigation.”¹⁹⁹ In the case of *Manuel Cepeda-Vargas v Colombia*, the Inter-American Court of Human Rights held that the Colombian state authorities failed to pursue logical lines of inquiry into the murder of a journalist and politician and failed to investigate the hypothesis and strong evidence which pointed to the masterminds of the crime.²⁰⁰

75. Fourth, states have a duty to ensure that an investigation into an attack on a journalist is effective in the sense that it is capable of resulting in a decision as to whether the force applied was or was not justified in the circumstances, and also to the identification and punishment of those responsible.²⁰¹ This requires state authorities to undertake a comprehensive evidence gathering exercise. In the case concerning the murder of a Ukrainian political journalist, the European Court of Human Rights stated:

This is not an obligation of result, but of means. The authorities must have taken all reasonable steps to secure the evidence concerning the incident. Any deficiency in the investigation which undermines its ability to establish the cause of death or the persons responsible, whether the direct offenders or those who ordered or organised the crime, will risk falling foul of this standard.²⁰²

v. *Access to investigative and judicial processes*

76. Family members of a journalist who has been killed should be provided with information about the investigation from state authorities. Any investigation files should be made available to the family who should be kept regularly briefed about the conduct of and progress made in the investigation. The Joint Declaration of the international intergovernmental experts on Crimes Against Freedom of Expression recognises that victims and family members should be “afforded effective access” to the investigation and subsequent proceedings, including by sharing the relevant documents with them. The European and Inter-American human rights systems have reinforced this principle, which reflects the *Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions*.²⁰³

77. The European Court of Human Rights in *Adalı v Turkey* emphasised “the importance of involving the families of the deceased or their legal representatives in the investigation and of providing them with information as well as enabling them to present other evidence”.²⁰⁴ The European Court of Human Rights held that the wife of a “disappeared” journalist suffered degrading treatment in violation of Article 3 of the ECHR on account of the emotional distress caused by the attitude and inaction of state authorities investigating the disappearance and of her husband.²⁰⁵ The wife of the journalist was consistently refused access to information in the case file and was only given access to the file five years after he first disappeared.²⁰⁶ States within the Inter-American human rights system have a similar obligation to ensure that journalists who have been killed or attacked or their family members have

¹⁹⁹ Inter-American Court of Human Rights, *Rochela Massacre v. Colombia*, Judgment of 11 May 2007, Series C No 163, para 158.

²⁰⁰ Inter-American Court of Human Rights, *Manuel Cepeda-Vargas v Colombia*, Judgment of 26 May 2010, Series C No. 213 at paras 106 - 110, 167.

²⁰¹ European Court of Human Rights, *Dink v Turkey*, Application Nos 2668/07, 6102/08, 30079/08, 7072/09 and 7124/09, judgment of 14 September 2000, para 82 – 91.

²⁰² European Court of Human Rights, Application No 34056/02, judgment of 8 November 2005, para 176.

²⁰³ Economic and Social Council, Principles on Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, Economic and Social Council Resolution 1989/65 of 24 May 1989, section 16.

²⁰⁴ European Court of Human Rights, *Adalı v Turkey*, Application No 38187/97, Judgment of 31 March 2005 at para 232.

²⁰⁵ European Court of Human Rights, *Gongadze v Ukraine*, Application No 34056/02, Judgment of 8 November 2005, paras 184 – 186.

²⁰⁶ European Court of Human Rights, *Gongadze v Ukraine*, Application No 34056/02, Judgment of 8 November 2005, paras 185.

complete access at all stages and at all levels of the investigation and corresponding judicial process, including punishment and reparation.²⁰⁷

78. Interestingly, the Joint Declaration on Crimes Against Freedom of Expression goes further by recommending that civil society organisations should be able to actively participate in complaints concerning such crimes as “killings, abductions or disappearances” of journalists and media workers, specifically “where the next-of-kin are unwilling or unable to do so – and intervene to [sic] in the criminal proceedings.”²⁰⁸

vi. Protection of persons involved

79. The general duty to investigate within the framework of due process guarantees also carries with it an obligation to protect those involved in the process of investigation – notably, victims, victims’ families, witnesses, investigators, judges – from threats or harassments which are “designed to obstruct the proceedings, impede the clarification of the facts of the case, and prevent the identification of those responsible.”²⁰⁹

80. In *Vélez Restrepo and Family v Colombia*, the victim and his family were threatened and harassed repeatedly because of his reporting and, in particular, his decision to pursue criminal and disciplinary sanctions against the state security forces that attacked him for covering their abuse of unarmed demonstrators. The Inter-American Court of Human Rights found Colombia responsible for failing to protect Mr Vélez Restrepo and his family, a failure that eventually forced him and his family to flee the country.²¹⁰ The court reached a similar conclusion in *Manuel Cepeda Vargas v Colombia*, in which it found that members of the family of the victim, a Colombian journalist and politician who was murdered by members of the armed forces, were threatened with the aim of preventing accountability for his killing and forced into exile.²¹¹

vii. Women journalists

81. In cases of attacks on women, including journalists who are women, it is “particularly important that the authorities in charge of the investigation carry it out ... in a determined and effective manner, taking into account society’s obligation to reject violence against women and the State’s obligation to eliminate it and to ensure that victims trust the State institutions for their protection”.²¹²

82. The Inter-American Court has also indicated specific duties on states to investigate allegations of rape which may be relevant to understanding the scope of states’ obligations in connection with sexual violence perpetrated against journalists, whether men or women.²¹³

c. Duty to prosecute and punish

i. Statutes of limitations

83. Statutes of limitations should not present obstacles to seeking justice for journalists and media workers who have lost their lives, been injured or threatened. The Special Rapporteur on extrajudicial, summary

²⁰⁷ Office of the Special Rapporteur for Freedom of Expression. Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism (1995-2005), OEA/Ser.L/V/II.131. Doc 35, 8 March 2008 at para 41.

²⁰⁸ Joint Declaration on Crimes Against Freedom of Expression, June 2012.

²⁰⁹ Inter-American Court of Human Rights, *Rochela Massacre v Colombia*, Judgment of 11 May 2007, Series C No 163, para 171.

²¹⁰ Inter-American Court of Human Rights, *Vélez Restrepo and Family v Colombia*, Preliminary Objections, Merits, Reparations and Costs. Judgment of 3 September 2012, Series C No. 248, paras 203 – 204.

²¹¹ Inter-American Court of Human Rights, *Manuel Cepeda-Vargas v Colombia*, Judgment of 26 May 2010, Series C No. 213, paras 194 –195.

²¹² Inter-American Court of Human Rights, *Rosendo Cantú et al v Mexico*, Judgment of 31 August 2010, Series C No 216, para 177.

²¹³ Inter-American Court of Human Rights, *Rosendo Cantú et al v Mexico*, Judgment of 31 August 2010, Series C No 216, para 178.

or arbitrary executions recommends that “[s]tatutes of limitation should not allow prosecutions to be blocked.”²¹⁴ The Joint Declaration on Crimes Against Freedom of Expression similarly provides that “crimes against freedom of expression, and the crime of obstructing justice in relation to those crimes, should be subject to either unlimited or extended statutes of limitations (i.e. the time beyond which prosecutions are barred),”²¹⁵ while the United Nations Plan of Action on the Safety of Journalists and the Issue of Impunity calls upon member states to fully comply with “the principle that there should be no statute of limitations for on persons guilty of crimes against freedom of expression”.²¹⁶

ii. *Proportionality of punishment*

84. Through their formal texts and reports, international human rights bodies have reiterated that the attacks on journalists should be properly investigated and that perpetrators of attacks on journalists should be prosecuted.²¹⁷ Yet such bodies they have not generally elaborated on the issue of the appropriate penalties for attacks on journalists as such.²¹⁸ The Joint Declaration on Crimes Against Freedom of Expression does state, however, that such crimes be “recognised in the criminal law, either explicitly or as an aggravated circumstance leading to heavier penalties for such crimes, taking into account their serious nature,” and should meet the requirement of proportionality.²¹⁹
85. Under established principles of international law, any punishment for those properly convicted of killings and non-fatal attacks against journalists and media worker should be proportionate. According to the Working Group on Arbitrary Detention, an individual may be deprived of her/his right to liberty under Article 9 of the ICCPR only insofar as it is necessary to meet a pressing societal need, and in a manner proportionate to that need.²²⁰ This key principle of sentencing means that any sentence for an attack on a journalist or media worker should “fit the crime”. The European Court of Human Rights has recognised that proportionality is an essential part of sentencing and has held that in exceptional cases a “grossly disproportionate” sentence could be found to breach Article 3 of the ECHR.²²¹ The relevance of the principle of proportionality to sentencing has been endorsed by the Inter-American Court of Human Rights. In *Rochela Massacre v Colombia*, the court held that in order for states to fulfil their duties to investigate, prosecute, punish and provide redress for serious human rights violations, they must observe “due process and guarantee the principles of expeditious justice, adversarial defense, effective recourse, implementation of the judgment, and the proportionality of punishment, among other principles.”²²² It continued that the punishment of a crime “should be proportional to the rights recognized by law and the culpability with which the perpetrated acted, which in turn should be established as a function of the nature and gravity of the events [*sic*].”²²³

²¹⁴ Human Rights Council, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, 10 April 2012, A/HRC/20/22 at para 111.

²¹⁵ Joint Declaration on Crimes Against Freedom of Expression, June 2012.

²¹⁶ See para 5.9 of Plan of Action. UNESCO, International Programme for the Development of Communication (IPDC), *UN Plan of Action on the Issue of the Safety of Journalists and the Issue of Impunity*, April 2012, CI-12/CONF.202/6. See also United Nations Educational, Scientific and Cultural Organization (UNESCO), Resolution 29 “Condemnation of violence against journalists”, November, 1997.

²¹⁷ For example, Human Rights Council, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank la Rue, 4 June 2012, A/HRC/20/17 at para 98; and Human Rights Council, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, 10 April 2012, A/HRC/20/22 at para 70.

²¹⁸ Human Rights Council Resolution 21/12 of 27 September 2012, A/HRC/RES/21/12; and Human Rights Council Decision 24/116 of 26 September 2013, A/HRC/DEC/24/116.

²¹⁹ Joint Declaration on Crimes Against Freedom of Expression, June 2012.

²²⁰ See Commission on Human Rights, Report of the Working Group on Arbitrary Detention, 12 December 2005, E/CN.4/2006/7, para 63; Human Rights Council, Report of the Working Group on Arbitrary Detention, 30 July 2014, para 72.

²²¹ European Court of Human Rights, *Harker and Edwards v UK*, Application No 32650/07, Judgment of 17 January 2012 at para 134; see also European Court of Human Rights, *Rrapo v Albania*, Application No 58555/10, Judgment of 25 September 2012 at para 90.

²²² Inter-American Court of Human Rights, *Rochela Massacre v Colombia*, Judgment of 11 May, 2007, Series C No 163, para 193.

²²³ Inter-American Court of Human Rights, *Rochela Massacre v Colombia*, Judgment of 11 May, 2007, Series C No 163, para 196.

d. Remedies

86. Journalists and media workers who are victims of attacks should receive appropriate redress or remedies for threats or violations of their right to life or freedom of expression. This principle is well supported by international human rights bodies.²²⁴ In *Velásquez Rodríguez v Honduras*, the Inter-American Court of Human Rights held that not only must states “prevent, investigate and punish any violation of the rights”, they should “attempt to restore the right violated and provide compensation as warranted for damages resulting from the violation”.²²⁵
87. The Joint Declaration on Crimes Against Freedom of Expression indicates that remedies should include financial compensation as well as rehabilitation, and civil remedies should be available irrespective of whether there has been a conviction for a crime against freedom of expression. It states:
1. **Where crimes against freedom of expression are committed, the victims should be able to pursue appropriate civil remedies, regardless of whether or not a criminal act has been established.**
 2. **Where a conviction is entered for a crime against freedom of expression, a system should be in place to ensure that an adequate remedy is provided to the victims, without the need for them to pursue independent legal action. Such remedies should be proportionate to the gravity of the violations, and should include financial compensation, and a range of measures to rehabilitate the victims and to facilitate the return of victims to their homes in conditions of safety and/or to reinstate them in their work if they so desire.**²²⁶
88. It is interesting to note that, at the level of the Inter-American Court of Human Rights, the range of remedies available in cases of attacks on journalists is characteristic of the positive approach of that regional court in granting reparations. Consider that the court in *Vélez Restrepo and Family v Colombia*, besides ordering the state to conduct an effective criminal investigation and pay compensation for pecuniary and non-pecuniary damage, ordered the state to: guarantee the conditions for the members of the Vélez Román family to return to live in Colombia, if they so decided; “provide health care to the victims through its specialized health care institutions if the victims indicated their intention of returning to live in Colombia”; pay the victims sums of money in order to help cover the costs of health care if the members of the Vélez Román family decided not to return to live in Colombia; and, most interestingly, “incorporate into its human rights education programs for the armed forces a specific module on the protection of the right to freedom of thought and expression and on the role of journalists and social communicators”.²²⁷ The Inter-American Court in *Manuel Cepeda-Vargas v Colombia* ordered the state to: adopt all necessary measures to guarantee the safety of Manuel Cepeda Vargas’s family and to prevent them from having to move or to leave the country again as a result of threats, or acts of harassment or persecution against them that might follow its own judgment; publish key parts of the judgment on an appropriate webpage of the state; organise a “public act of acknowledgement of international responsibility for the facts of this case”; prepare with his family and disseminate a publication and make an audio-visual documentary on the political life, journalism career and political role of the Senator, Manuel Cepeda Vargas; “provide the medical and psychological treatment that the victims require”.²²⁸

²²⁴ Human Rights Committee, General Comment No 34 on Article 19 on freedom of opinion and expression, CCPR/C/GC/34, 11 September 2011, para 23. Human Rights Council, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, 10 April 2012, A/HRC/20/22 at para 43; Human Rights Council Resolution 21/12 of 27 September 2012, A/HRC/RES/21/12 at para 7.

²²⁵ Inter-American Court of Human Rights, *Velásquez Rodríguez v Honduras*, Judgment of 29 July 1988, Series C No 04 para 166.

²²⁶ 2012 Joint Declaration on Crimes Against Freedom of Expression, June 2012.

²²⁷ Inter-American Court of Human Rights, *Vélez Restrepo and Family v Colombia*, Preliminary Objections, Merits, Reparations and Costs. Judgment of 3 September 2012, Series C No. 248, para 317 (operative paragraphs).

²²⁸ Inter-American Court of Human Rights, *Manuel Cepeda-Vargas v Colombia*, Judgment of 26 May 2010, Series C No. 213 at paras 265 (operative paragraphs).

3. The Duty to Protect

89. The duty to protect journalists and media workers stems from the state's positive obligations in relation to the right to life and freedom of expression. States are required under this obligation to protect journalists and other media workers from threats by non-state actors, especially if they have been identified as facing a particular risk of attack.²²⁹ According to the Human Rights Committee, states have obligations to “put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression”.²³⁰ The UN Plan of Action also urges states to “take prompt action in response to attacks by establishing national emergency mechanisms, which different stakeholders can adopt.”²³¹

90. The Joint Declaration on Crimes Against Freedom of Expression includes very specific standards with respect to the duty to protect, namely:

1. States should ensure that effective and concrete protection is made available on an urgent basis to individuals likely to be targeted for exercising their right to freedom of expression.
2. Specialised protection programmes, based on local needs and challenges, should be put in place where there is an ongoing and serious risk of crimes against freedom of expression. These specialised programmes should include a range of protection measures, which should be tailored to the individual circumstances of the person at risk, including his or her gender, need or desire to continue to pursue the same professional activities, and social and economic circumstances.
3. States should maintain detailed and disaggregated statistics on crimes against freedom of expression and the prosecution of these crimes, among other things to facilitate better planning of prevention initiatives.²³²

91. The recent, significant report of the OAS Special Rapporteur on Freedom of Expression on *Violence against Journalists and Media Workers* showcases existing special programmes for the protection of journalists in the OAS region and recent measures to establish them where they do not exist in the countries of Colombia, Mexico, Brazil, Guatemala and Honduras.²³³ The Special Rapporteur on freedom of opinion and expression took note of measures to combat impunity and their associated challenges in his 2012 report and recommended that “special measures should be put in place to deal with attacks and to support journalists who are displaced by attacks”.²³⁴ The Special Rapporteur on extrajudicial, summary or arbitrary executions has recommended special measures as a means to combat social structures that cause attacks against journalists to continue with impunity. He has recommended that “states where there is a pattern of killing of journalists should take special measures to address this issue, and should be scrutinized in respect of those measures by the relevant human rights mechanisms.”²³⁵

92. In determining the circumstances when measures to protect should be applied, it is necessary to consider when the positive obligations of the state would be triggered. In *Kılıç v Turkey*, a case concerning the killing of a journalist who had previously asked for protection measures from the state

²²⁹ Human Rights Committee, General Comment no 31 on The Nature of the General Legal Obligation Imposed on States Parties to the Covenant under Article 2, 29 March 2004, CCPR/C/21/Rev.1/Add.13.

²³⁰ Human Rights Committee, General Comment No 34 on Article 19 on freedom of opinion and expression, CCPR/C/GC/34, 11 September 2011, para 23.

²³¹ UNESCO, International Programme for the Development of Communication (IPDC), *UN Plan of Action on the Issue of the Safety of Journalists and the Issue of Impunity*, April 2012, CI-12/CONF.202/6. at 5.8.

²³² 2012 Joint Declaration on Crimes Against Freedom of Expression, June 2012.

²³³ OAS, Inter-American Commission on Human Rights, *Violence against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection and Prosecution of Perpetrators*, OEA/Ser.L/V/II, CIDH/RELE/INF.12/13, 31 December 2013 at pp 55 – 98.

²³⁴ Human Rights Council, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank la Rue, 4 June 2012, A/HRC/20/17 at para 102.

²³⁵ Human Rights Council, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, 10 April 2012, A/HRC/20/22 at para 112.

authorities for himself and others, the European Court of Human Rights held that the test for whether there was a breach of a positive obligation, was if:

the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk.²³⁶

93. The European court found that Kemal Kılıç, as a journalist, was exposed to the risk of an “immediate and real” attack, that the authorities were aware of this risk and, additionally, that they “were aware, or ought to have been aware, of the possibility that this risk derived from the activities of persons or groups acting with the knowledge or acquiescence of elements in the security forces”.²³⁷ After finding that there the Turkish state had “failed to take reasonable measures ... to prevent a real and immediate risk to the life of Kemal Kılıç”, the court held that there had been a violation of Article 2 of the ECHR.²³⁸ In assessing whether the state failed to meet its obligation to protect the life of a journalist “from a known risk to his life”, the European Court of Human Rights has taken into account the extent to which such bodies, particularly public prosecutors, “ought to have been aware of the vulnerable position in which a journalist who covered politically sensitive topics placed himself/herself *vis-à-vis* those in power at the material time”.²³⁹ The European Court of Human Rights did not consider the complaint in *Kılıç v Turkey* from the perspective of Article 10 of the ECHR, however, on the grounds that it arose from the same facts as the complaint based on Article 2 of the ECHR in relation to which the court found a violation.²⁴⁰

94. The court did find violations of *both* Article 2 and Article 10 of the ECHR, however, in the most significant case decided by the European Court of Human Rights on the issue of the protection and safety of journalists, *Dink v Turkey*. The case concerned the killing of Hrant Dink, a Turkish journalist and editor of a Turkish-Armenian weekly newspaper who had been murdered. Dink’s articles on the identity of Turkish citizens of Armenian extraction had previously drawn aggressive responses from extreme nationalists who had staged demonstrations, written threatening letters and also lodged a criminal complaint against him that had resulted in a finding of guilt. The court found that the Turkish security forces could reasonably be considered to have been informed of the intense hostility towards the journalist in extreme nationalist circles, that the law enforcement authorities had been informed of the likelihood of an assassination attempt and even of the identity of the alleged instigators so that the threat of an assassination was real and imminent. Despite all these factors, the Turkish authorities failed to take reasonable measures to protect Dink’s life. (In the court’s opinion, although Dink had not requested increased protection, he could not have known of the plan to assassinate him.) The court found that the decision of Turkish courts that Dink was guilty of denigrating Turkishness by itself or coupled with the absence of protection measures for the journalist constituted an interference with his right to freedom of expression. The court found that this conviction, which penalized Dink for having written articles criticising the state institutions’ denial of the 1915 Armenian genocide, issues of important public concern and debate in a democratic society, did not meet a “pressing social need” and was therefore not necessary in a democratic society. Given the failure of the state authorities to protect Dink from attacks by the extreme nationalist group and the conviction in the absence of a pressing social need, the state had failed to meet its positive obligations with respect to freedom of

²³⁶ European Court of Human Rights, *Kılıç v Turkey*, Application No 22492/93, Judgment of 28 March 2000 para 63.

²³⁷ European Court of Human Rights, *Kılıç v Turkey*, Application No 22492/93, Judgment of 28 March 2000 paras 66 – 68.

²³⁸ European Court of Human Rights, *Kılıç v Turkey*, Application No 22492/93, Judgment of 28 March 2000 paras 77.

²³⁹ European Court of Human Rights, *Gongadze v Ukraine*, Application No 34056/02, Judgment of 8 November 2005 paras 166 and 168.

²⁴⁰ European Court of Human Rights, *Kılıç v Turkey*, Application No 22492/93, Judgment of 28 March 2000 paras 87.

expression.²⁴¹ In this regard, the court held that states should ensure that there is a positive climate for the exercise of this right. More specifically,

States should create a favourable environment for full participation in public debates by all persons concerned, enabling them to express their opinions and ideas without fear, even if such opinions and ideas are contrary to those held by the authorities or a significant share of public opinion, or viewed as offensive or shocking.²⁴²

95. The Inter-American Court took an identical approach in *Pueblo Bello Massacre v Colombia* to the European court in *Kilic v Turkey* with respect to when a state's positive obligations to protect life would be breached.²⁴³ In *Vélez Restrepo and Family v Colombia*, the Inter-American Commission on Human Rights found that the state had failed to protect a journalist and his family against a series of threats which eventually forced him into exile. More specifically, the commission concluded that the state of Colombia had not adopted "in a diligent manner and in good time the necessary measures to protect Mr. Vélez and his family from the threats and attacks brought to the attention of the authorities" and consequently, "the violation of the physical and moral integrity of Mr. Vélez and his family members is attributable to the State for omitting to implement effective means of protection despite having been notified and made aware of the risk run by the journalist and his family."²⁴⁴ The Inter-American Court of Human Rights agreed with the commission's conclusions. Significantly, it held that:

States have the obligation to adopt special measures of prevention and protection for journalists subject to special risk owing to the exercise of their profession. Regarding the measures of protection, the Court underlines that States have the obligation to provide measures to protect the life and integrity of the journalists who face this special risk owing to factors such as the type of events they cover, the public interest of the information they disseminate, or the area they must go to in order to do their work, as well as to those who are the target of threats in relation to the dissemination of that information or for denouncing or promoting the investigation of violations that they suffered or of those they became aware of in the course of their work. The States must adopt the necessary measures of protection to avoid threats to the life and integrity of journalists under those conditions.²⁴⁵

96. In the specific case of the journalist Vélez Restrepo, the Court concluded that he "clearly faced real and immediate risk to his personal integrity" and that the State, despite being aware of this situation, failed to act diligently to adopt the necessary protection measures for the journalist and his family in a timely manner.²⁴⁶ The Court stressed that state authorities should have familiarised themselves with "the situation of special risk in order to determine or assess whether the person who is the target of threats and harassment requires measures of protection or to refer the case to the competent authority to do this, and also to offer the person at risk timely information on the measures available."²⁴⁷ Noting the steps taken by the Colombian state authorities to protect at-risk journalists, the court urged Colombia to "continue taking all necessary measures to adopt and strengthen the special programs designed to protect journalists at risk [...]."²⁴⁸

²⁴¹ European Court of Human Rights, *Dink v Turkey*, Application Nos 2668/07, 6102/08, 30079/08, 7072/09 and 7124/09, judgment of 14 September 2000 paras 64 – 75, 106 – 108, 137 – 138 (French).

²⁴² European Court of Human Rights, *Dink v Turkey*, Application Nos 2668/07, 6102/08, 30079/08, 7072/09 and 7124/09, judgment of 14 September 2000, para 137.

²⁴³ Inter-American Court on Human Rights, "*Pueblo Bello Massacre*" v *Colombia*, Judgment of 31 January 2006, Series C No 140, para 124, citing European Court of Human Rights. *Kilic v. Turkey*, Application No 22492/93, Judgment 28 March 2000, para 63.

²⁴⁴ Inter-American Commission on Human Rights, *Vélez Restrepo and Family v Colombia*, Report No 136/10 Case 12.658, 23 October 2010.

²⁴⁵ Inter-American Court of Human Rights, *Vélez Restrepo and Family v Colombia*, Preliminary Objections, Merits, Reparations and Costs. Judgment of 3 September 2012, Series C No. 248, para 194.

²⁴⁶ Inter-American Court of Human Rights, *Vélez Restrepo and Family v Colombia*, Preliminary Objections, Merits, Reparations and Costs. Judgment of 3 September 2012, Series C No 248, para 194.

²⁴⁷ Inter-American Court of Human Rights, *Vélez Restrepo and Family v Colombia*, Preliminary Objections, Merits, Reparations and Costs. Judgment of 3 September 2012, Series C No 248, paras 209, 194, 195, 197 and 203, 201.

²⁴⁸ Inter-American Court of Human Rights, *Vélez Restrepo and Family v Colombia*, Preliminary Objections, Merits, Reparations and Costs. Judgment of 3 September 2012, Series C No 248, paras 289 and 290.

97. Measures to protect individuals are especially important when they allow the professional activities of those who work in the media to continue. The Inter-American Court of Human Rights has indicated that “the State must continue to adopt the appropriate and necessary measures to safeguard and protect the life, personal integrity, and freedom of expression of the beneficiaries of these provisional measures, especially when they carry out journalistic activities outside the station’s offices [...] The means and coverage of this protection must respond to the requirements of the circumstances.”²⁴⁹

4. The Duty to Prevent

a. General considerations

98. The obligations to prevent attacks are deeply connected to and overlap with those to protect journalists from attack and violence, particularly in contexts where authorities know or ought to have known that there is a real and immediate risk that a journalist or media worker may suffer an attack. As the European Court of Human Rights indicated in *Gongadze v Ukraine*, a state’s obligations “[extend], in appropriate circumstances, to a positive obligation on the authorities to take *preventive operational* measures to protect an individual or individuals whose lives are at risk from the criminal acts of another individual” (emphasis added).²⁵⁰ The Inter-American Court of Human Rights has also held that a prevention strategy should be comprehensive and deal with challenges facing women in particular. The court has stated that such a strategy should “prevent the risk factors and, at the same time, strengthen the institutions that can provide an effective response in cases of violence against women”.²⁵¹ From these perspectives, an absence of a general public policy of prevention and a failure to take account of any risk factors facing women journalists can mean that the state has failed in its duty to prevent.²⁵²

99. The Joint Declaration on Crimes Against Freedom of Expression contains a substantial section elaborating upon the elements of this duty to prevent:

- a) **States have an obligation to take measures to prevent crimes against freedom of expression in countries where there is a risk of these occurring and in specific situations where the authorities know or should have known of the existence of a real and immediate risk of such crimes, and not only in cases where those at risk request State protection.**
- b) **These obligations include the following legal measures:**
 - i. **the category of crimes against freedom of expression should be recognised in the criminal law, either explicitly or as an aggravated circumstance leading to heavier penalties for such crimes, taking into account their serious nature; and**
 - ii. **crimes against freedom of expression, and the crime of obstructing justice in relation to those crimes, should be subject to either unlimited or extended statutes of limitations (i.e. the time beyond which prosecutions are barred).**
- c) **These obligations include the following non-legal measures:**
 - i. **appropriate training on crimes against freedom of expression, including gender specific crimes, should be provided to relevant law enforcement officials, including the police and prosecutors, as well, where necessary, to military personnel;**

²⁴⁹ Inter-American Court of Human Rights *Provisional Measures, Matter of "Globovisión" Television Station regarding Venezuela*, Order of the Inter-American Court of Human Rights, 21 November 2007, considering 11.

²⁵⁰ European Court of Human Rights, *Gongadze v Ukraine*, Application No 34056/02, judgment of 8 November 2005, para 164.

²⁵¹ Inter-American Court of Human Rights, *González et al. ("Cotton Field") v Mexico*. Preliminary Objections, Merits, Reparations and Costs, Judgment of 16 November 2009, Series C No. 205, para 258.

²⁵² Inter-American Court of Human Rights, *González et al. ("Cotton Field") v México*. Preliminary Objection, Merits, Reparations and Costs. Judgment of 16 November 2009, Series C No. 205, para 282.

- ii. operation manuals and guidelines should be developed and implemented for law enforcement officials when dealing with crimes against freedom of expression;
- iii. training supported by the State should be available for individuals who may be at risk of becoming victims of crimes against freedom of expression and this issue should be covered in university courses on journalism and communications;
- iv. systems to ensure effective access to information about the circumstances, investigation and prosecution of crimes against freedom of expression, including media access to the courts, should be put in place, subject to appropriate guarantees of confidentiality; and
- v. consideration should be given to putting in place general measures of protection such as providing health care, insurance and other benefit programmes to individuals who may be at risk of becoming victims of crimes against freedom of expression.²⁵³

100. The UN Plan of Action on the Safety of Journalists also has important provisions with respect to prevention.

1.6 Promoting the safety of journalists and fighting impunity must not be constrained to after-the- fact action. Instead, it requires prevention mechanisms and actions to address some of the root causes of violence against journalists and of impunity. This implies the need to deal with issues such as corruption, organized crime and an effective framework for the rule of law in order to respond to negative elements. In addition, the existence of laws that curtail freedom of expression (e.g. overly restrictive defamation laws), must be addressed. The media industry also must deal with low wages and improving journalistic skills. To whatever extent possible, the public must be made aware of these challenges in the public and private spheres and the consequences from a failure to act. The protection of journalists should adapt to the local realities affecting journalists. Journalists reporting on corruption and organized crime, for example, are increasingly targeted by organized crime groups and parallel powers. Approaches that are tailored to local needs should be encouraged.

5.8 Encourage Member States to take an active role in the prevention of attacks against journalists, and take prompt action in response to attacks by establishing national emergency mechanisms, which different stakeholders can adopt, for example;

5.10 Encourage Member States to comply with the IPDC's Decisions on the Safety of Journalists and the Issue of Impunity, and submit information on the actions taken to prevent impunity for killings of journalists, and on the status of the judicial inquiries conducted on each of the killings condemned by UNESCO.²⁵⁴

101. The following sections highlight various key elements of the duty to prevent.

b. Fostering a climate for prevention

102. States should foster a climate within society which prevents attacks on journalists and media workers from taking place in the first place. Such a climate could be nurtured in numerous ways.

i. "Crimes against freedom of expression"

103. States should establish a specific category of crimes against freedom of expression in order to use the dissuasive power of the criminal law to prevent violence against journalists. The Joint Declaration on Crimes Against Freedom of Expression recommends that "the category of crimes against freedom of expression should be recognised in the criminal law, either explicitly or as an aggravated circumstance leading to heavier penalties for such crimes, taking into account their serious nature".²⁵⁵ This draws from UNESCO Resolution 29, which calls on states to "refine legislation to make it possible to prosecute and sentence those who instigate the assassination of persons exercising the right to freedom of expression".²⁵⁶

²⁵³ Joint Declaration on Crimes Against Freedom of Expression, June 2012.

²⁵⁴ UNESCO, International Programme for the Development of Communication (IPDC), *UN Plan of Action on the Issue of the Safety of Journalists and the Issue of Impunity*, April 2012, CI-12/CONF.202/6.

²⁵⁵ Joint Declaration on Crimes Against Freedom of Expression, June 2012.

²⁵⁶ UNESCO, Resolution 29 on Condemnation of Violence Against Journalists, General Conference 29th session, November 1997.

ii. *Speaking out*

104. State officials should positively use their freedom of expression to “unequivocally condemn attacks committed in reprisal for the exercise of freedom of expression and should refrain from making statements that are likely to increase the vulnerability of those who are targeted for exercising their right to freedom of expression.”²⁵⁷ They should therefore consider the swift and energetic condemnation of attacks on journalists and media workers as an aspect of their duty to punish those responsible,²⁵⁸ but also as one of their duty to prevent. As the Special Rapporteur on extra-judicial, summary or arbitrary executions recommended, “a clear public stand should be taken at the highest level of Government to condemn extrajudicial, summary or arbitrary executions of journalists and threats to their lives, and to re-emphasise the important role of journalists in society”,²⁵⁹ a view also taken by the Council of Europe Commissioner for Human Rights.²⁶⁰
105. In *Perozo et al v Venezuela*, the Inter-American Court considered attacks on the employees of a television company against the backdrop of statements made by high-ranking public officials that the company, its owners and executives were “enemies of the revolution”, “enemies of the people of Venezuela”, “fascist” and participated in the 2002 *coup d’état* against President Hugo Chávez.²⁶¹ The public officials obviously had a right to express themselves but this should be exercised with special care in sensitive social situations. As the court stated:

in a democratic society it is not just legitimate but also, sometimes, a duty of the state authorities to make statements about issues of the public interest. Nevertheless, when doing so they have to verify reasonably, though not necessarily in an exhaustive manner, the truthfulness of the facts supporting their opinions, and this verification should be performed subject to a higher standard than that used by private parties, given the high level of credibility the authorities enjoy, the broad scope and possible effects their sayings may produce on certain sectors of the society and with a view to keeping citizens from receiving a distorted version of the facts. Furthermore, they should bear in mind that, as public officials, they are in a position of guarantors of the fundamental rights of the individual and, therefore, their statements cannot be such that they disregard said rights so that they must not amount to a form of interference with or pressure impairing the rights of those who intend to contribute to public deliberation by means of expression and dissemination of its thought. This duty of special care is particularly emphasized in those situations of greater social conflict, disorderly conducts or social and political bias, precisely because of the risks entailed for certain people or groups at a given time.²⁶²

iii. *Education and training*

106. States should ensure that relevant officials receive relevant education and training on the protection of journalists. Specifically, the security forces and law enforcement officials should “receive training, as part of standard procedure, on the legitimacy of the presence of journalists during *non*-armed and armed conflict and the legal protection for their safety.”²⁶³ The Special Rapporteurs of the UN and OAS have also noted “that properly educating State security forces on the role of the press in a democratic

²⁵⁷ Joint Declaration on Crimes Against Freedom of Expression, June 2012.

²⁵⁸ Inter-American Court of Human Rights, *Ríos et al v Venezuela*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of 28 January 2009. Series C No 194, para 151.

²⁵⁹ Human Rights Council, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, 10 April 2012, A/HRC/20/22 para 110.

²⁶⁰ See Council of Europe Commissioner for Human Rights, Protection of Journalists from Violence: Issue Discussion Paper, 4 October 2011, CommDH(2011)44, foreword.

²⁶¹ Inter-American Court of Human Rights, *Perozo et al v Venezuela*. Preliminary, Judgment of 28 January 2009, Series C No 195, para 141-142, 139.

²⁶² Inter-American Court of Human Rights, *Perozo et al v Venezuela*. Preliminary, Judgment of 28 January 2009, Series C No 195, para 141-142, at 151.

²⁶³ Human Rights Council, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, 10 April 2012, A/HRC/20/22 at para 118.

society is an important step in preventing violence against journalists and media workers in situations of social unrest”.²⁶⁴

107. The Joint *Declaration* on Crimes Against Freedom of Expression indicated that the following training and education measures should be adopted by states:

- i. **appropriate training on crimes against freedom of expression, including gender specific crimes, should be provided to relevant law enforcement officials, including the police and prosecutors, as well, where necessary, to military personnel;**
- ii. **operation manuals and guidelines should be developed and implemented for law enforcement officials when dealing with crimes against freedom of expression;**
- iii. **training supported by the State should be available for individuals who may be at risk of becoming victims of crimes against freedom of expression and this issue should be covered in university courses on journalism and communications.**²⁶⁵

108. As *Vélez Restrepo and Family v Colombia*, the Inter-American Court of Human Rights appreciated “the measures *taken* by Colombia ... through directives that seek to raise awareness within the Armed Forces about the work of journalists and social communicators and the danger they face, especially during armed conflicts, and also about the necessary respect they must exercise so that the latter can exercise their profession without obstacles.”²⁶⁶ Nonetheless, it ordered the Colombian state to “incorporate into its human rights education programs for the Armed Forces, a specific module on the protection of the right to freedom of thought and expression and on the work of journalists and social communicators.”²⁶⁷

iv. Data-gathering

109. States should collect and maintain “detailed and disaggregated statistics” on attacks on journalists and media workers and “the prosecution of these crimes, among other things to facilitate better planning of prevention initiatives.”²⁶⁸ Such data-gathering by states on killings and threats to journalists and media workers, should be complemented by similar efforts by intergovernmental and non-governmental organisations, and should “analyse the trends and developments, including in a gender sensitive way.”²⁶⁹

v. Women journalists

110. Human Rights Council resolution on the “role of freedom of opinion and expression in women’s empowerment” of 2013 expressed concern about “the specific risks faced by women journalists in the exercise of their work” and called for a gender-sensitive approach when considering measures to address the safety of journalists.²⁷⁰ The Special Rapporteur on freedom of opinion and expression has

²⁶⁴ Joint Statement of the UN Special Rapporteur on freedom of opinion and expression and the Organization of American States Special Rapporteur on Freedom of Expression on violence against journalists and media workers in the context of protests, 13 September 2013.

²⁶⁵ Joint Declaration on Crimes Against Freedom of Expression, June 2012.

²⁶⁶ Inter-American Court of Human Rights, *Vélez Restrepo and Family v Colombia*, Preliminary Objections, Merits, Reparations and Costs. Judgment of 3 September 2012, Series C No. 248, para 277.

²⁶⁷ Inter-American Court of Human Rights, *Vélez Restrepo and Family v Colombia*, Preliminary Objections, Merits, Reparations and Costs. Judgment of 3 September 2012, Series C No. 248, para 317 (operative paragraph).

²⁶⁸ Joint Declaration on Crimes Against Freedom of Expression, June 2012.

²⁶⁹ Human Rights Council, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, 10 April 2012, A/HRC/20/22 at para 107.

²⁷⁰ Human Rights Council, The role of freedom of opinion and expression in women’s empowerment of 13 June 2013, A/HRC/RES/23/2, para 3.

also advocated a “gender-sensitive approach ... when considering measures to address the issue of violence against journalists.”²⁷¹

111. Education and training programmes should therefore serve to counter gender stereotypes about female journalists and media professionals who may be especially vulnerable to certain types of attacks.²⁷²

c. An environment for a free media

112. The Special Rapporteur on freedom of opinion and expression has indicated that “[e]nsuring that journalists can carry out their work means not only preventing attacks against journalists and prosecuting those responsible, but also creating an environment where independent, free and pluralistic media can flourish and journalists are not placed at risk of imprisonment.”²⁷³ In terms of law, there should be two key features for such an environment to exist: first, journalists should not be forced to reveal their sources; and, second, they should not be charged with criminal defamation.

i. Confidentiality of sources

113. While the Human Rights Committee endorsed this “limited journalistic privilege not to disclose information sources” through General Comment No 34 at the international level,²⁷⁴ it has also been emphasised on numerous occasions by regional bodies of the Council of Europe,²⁷⁵ the African Commission on Human and Peoples’s Rights,²⁷⁶ and the Inter-American Commission on Human Rights.²⁷⁷ This “the right of journalists not to disclose their sources except under very narrowly defined circumstances” is significant for the protection of journalists and media workers as well as their sources from attack.²⁷⁸ As the Special Rapporteur on freedom of opinion and expression, the OAS Special Rapporteur on Freedom of Expression recently emphasised: “the perception that journalists can be forced to testify not only limits their ability to access sources of information, but also increases their risk of being targeted by violent groups”, particularly in situations of social unrest.²⁷⁹

²⁷¹ Human Rights Council, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank la Rue, 4 June 2012, A/HRC/20/17, para 52.

²⁷² Inter-American Commission on Human Rights, *Access to Justice for Women Victims of Sexual Violence in Mesoamerica*, OEA/Ser.L/V/II Doc 63, 9 December 2011, para 181.

²⁷³ Human Rights Council, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank la Rue, 4 June 2012, A/HRC/20/17 at para 78.

²⁷⁴ Human Rights Committee, General Comment No 34 on Article 19 on freedom of opinion and expression, CCPR/C/GC/34, 11 September 2011, para 45.

²⁷⁵ See for example, Council of Europe Committee of Ministers, Recommendation No R (2000) 7 on the right of journalists not to disclose their sources of information, adopted 8 March 2000; Parliamentary Assembly, Recommendation 1950 (2011) on the Protection of Journalists’ Sources, 25 January 2011.

²⁷⁶ The African Commission’s Declaration on Principles on Freedom of Expression in Africa of 2002 affirms that media “practitioners shall not be required to reveal confidential sources of information or to disclose other material held for journalistic purposes” unless “the identity of the source is necessary for the investigation or prosecution of a serious crime, or the defence of a person accused of a criminal offence”; the “information or similar information leading to the same result cannot be obtained elsewhere”; “the public interest in disclosure outweighs the harm to freedom of expression”; and “disclosure has been ordered by a court, after a full hearing.” African Commission’s Declaration on Principles on Freedom of Expression in Africa Banjul, 23 October 2002 at XV.

²⁷⁷ The Declaration of Principles on Freedom of Expression adopted in October 2000, establishes that “[e]very social communicator has the right to keep his/her source of information, notes, personal and professional archives confidential.” Inter- American Commission on Human Rights, Declaration of Principles on Freedom of Expression, approved by the Inter- American Commission on Human Rights during its 108th regular period of sessions, held from 2 – 20 October 2000, principle 8.

²⁷⁸ Human Rights Council, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, 10 April 2012, A/HRC/20/22 at para 59 referring to Council of Europe Parliamentary Assembly resolutions 1438 (2005) and 1535 (2007) ad recommendation 1897 (2010).

²⁷⁹ Joint Statement of the UN Special Rapporteur on freedom of opinion and expression and the Organization of American States Special Rapporteur on Freedom of Expression on violence against journalists and media workers in the context of protests, 13 September 2013.

114. The protections afforded under international humanitarian law for the confidentiality of sources to be protected may be applicable in a wider range of situations of social unrest or sensitivity. The Office of the OAS Special Rapporteur on freedom of expression has recently observed that:

the conclusions of the International Criminal Court for the former Yugoslavia could apply not only to situations of armed conflict but also to situations of social unrest (*infra*) and to journalists covering sensitive topics, such as corruption and the activities of security forces and organized crime. In this regard, the Office of the Special Rapporteur indicates that the protection of confidential sources not only contributes to the press's fundamental role as watchdog but also helps to prevent journalists from becoming victims of violence.²⁸⁰

115. The protection of journalistic sources has been prioritised by the European Court of Human Rights as “one of the basic conditions for press freedom” since the seminal case of *Goodwin v UK*.²⁸¹ In that case, the court held:

Without such protection, sources may be deterred from assisting the press in informing the public on matters of public interest. As a result, the vital public-watchdog role of the press may be undermined and the ability of the press to provide accurate and reliable information may be adversely affected. Having regard to the importance of the protection of journalistic sources for press freedom in a democratic society and the potentially chilling effect an order of source disclosure has on the exercise of that freedom, such a measure cannot be compatible with Article 10 (art. 10) of the Convention unless it is justified by an overriding requirement in the public interest.²⁸²

116. This protection is “part and parcel of the right to information,” rather than a “mere privilege to be granted or taken away depending on the lawfulness or unlawfulness of [the] sources”.²⁸³ Any orders requiring disclosure of the journalists’ sources must be justified in the public interest. If they are not, they will “have a detrimental impact not only on the source in question, whose identity may be revealed, but also on the newspaper against which the order is directed, whose reputation may be negatively affected in the eyes of future potential sources by the disclosure and on the members of the public, who have an interest in receiving information imparted through anonymous sources and who are also potential sources themselves”.²⁸⁴ In *Sanoma Uitgevers BV v the Netherlands*, the Grand Chamber of the European Court of Human Rights emphasised that orders requiring journalists to disclose their sources must be subject to the guarantee of judicial review or review by another independent and impartial review body.²⁸⁵ The criteria for such a review are:

- i. **it should be carried out by a body separate from the executive and other interested parties, invested with the power to determine whether a requirement in the public interest overriding the principle of protection of journalistic sources exists prior to the handing over of such material and to prevent unnecessary access to information capable of disclosing the sources’ identity if it does not;**
- ii. **the exercise of a review that only takes place subsequently to the handing over of material capable of revealing such sources would undermine the very essence of the right to confidentiality;**
- iii. **there must be a weighing of the potential risks and respective interests prior to any disclosure and with reference to the material that it is sought to have disclosed so that the arguments of the authorities seeking the disclosure can be properly assessed;**
- iv. **the review should be governed by clear criteria, including whether a less intrusive measure may be sufficient;**
- v. **it should be possible for the judge or other authority to refuse to make a disclosure order or to make a limited or qualified order so as to protect sources from being revealed, whether or not they are specifically named in the**

²⁸⁰ OAS, Inter-American Commission on Human Rights, *Violence against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection and Prosecution of Perpetrators*, OEA/Ser.L/V/II, CIDH/RELE/Inf.12/13, 31 December 2013 at para 54.

²⁸¹ European Court of Human Rights, *Goodwin v UK*, Application No 17488/90, Judgment of 27 March 1996 para 39.

²⁸² European Court of Human Rights, *Goodwin v UK*, Application No 17488/90, Judgment of 27 March 1996, para 39.

²⁸³ European Court of Human Rights, *Tillack v Belgium*, Application No 20477/05, Judgment of 27 November 2007, para 65.

²⁸⁴ European Court of Human Rights, *Financial Times Ltd and others v UK*, Application No 821/03, Judgment of 15 December 2009, para 63.

²⁸⁵ European Court of Human Rights, *Sanoma Uitgevers BV v Netherlands*, Application No 38224/03, Judgment of the Grand Chamber of 9 September 2010.

- withheld material, on the grounds that the communication of such material creates a serious risk of compromising the identity of journalists' sources; and
- vi. in urgent situations, there should be a procedure to identify and isolate, prior to the exploitation of the material by the authorities, information that could lead to the identification of sources from information that carries no such risk.²⁸⁶

117. The court held that whether the order for disclosure actually resulted in the disclosure or prosecution of journalistic sources is not decisive in determining whether there has been a violation of the journalist's rights under Article 10 of the ECHR. This is because "a chilling effect will arise wherever journalists are seen to assist in the identification of anonymous sources".²⁸⁷

118. The court has also recognised that secret surveillance by the state may interfere with an individual's freedom of expression if there is a risk that journalistic communications may be monitored – since this could mean that sources might be either disclosed or dissuaded from providing information by telephone. The transmission of data to other authorities, their destruction or the failure to notify the journalist of surveillance measures could also undermine the confidentiality of sources.²⁸⁸

ii. *Criminal defamation*

119. The intergovernmental experts on freedom of expression have identified laws on criminal defamation, alongside violence against journalists, as two of the ten key challenges to freedom of expression for the next decade.²⁸⁹ The Special Rapporteur on freedom of opinion and expression has on numerous occasions expressed his concern "at the continuing existence and use of criminal laws against journalists and members of the media, which are often used by authorities to suppress 'inconvenient' information and to prevent journalists from reporting on similar matters in the future", particularly matters in the public interest. The mandate-holder has recommended the decriminalisation of defamation laws everywhere, on the grounds that they "are inherently harsh and have a disproportionate chilling effect on the right to freedom of expression"²⁹⁰ and financial sanctions for civil defamation "to be strictly proportionate to the harm caused and limited by law."²⁹¹ The UN Plan of Action calls on states to ensure that defamation can only breach civil law and not criminal.²⁹² The OAS Special Rapporteur has argued that the criminalisation of expression, including those protecting reputation and honour, is one of the five central persistent freedom of expression challenges in the

²⁸⁶ European Court of Human Rights, *Sanoma Uitgevers BV v Netherlands*, Application No 38224/03, Judgment of the Grand Chamber of 9 September 2010 at paras 90 – 92 as summarized in Philip Leach, "The principles which can be drawn from the case-law of the European Court of Human Rights relating to the protection and safety of journalists and journalism", Report prepared for Council of Europe Conference of Ministers responsible for Media and Information Society, Freedom of Expression and Democracy in the Digital Age, *Freedom of Expression and Democracy in the Digital Age: Opportunities, Rights and Responsibilities*, Belgrade 7 – 8 November 2013, MCM(2013)012 F [CDMSI(2013)Misc3], para 54.

²⁸⁷ European Court of Human Rights, *Sanoma Uitgevers BV v Netherlands*, Application No 38224/03, Judgment of the Grand Chamber of 9 September 2010 at 71; European Court of Human Rights, *Financial Times Ltd and others v UK*, Application No 821/03, Judgment of 15 December 2009, para 70.

²⁸⁸ European Court of Human Rights, *Weber and Saravia v Germany*, Application No 54934/00, admissibility decision of 29 June 2006, para 145. On the issue of surveillance, see also European Court of Human Rights, *Bucur and Toma v Romania*, Application No 40238/02, judgment of 8 January 2013 in which the court found a violation of Article 10 in the case of a whistleblower who was sanctioned (with a two year prison suspended sentence) for releasing information to the media about the intelligence services surveillance of journalists, politicians and businesspeople.

²⁸⁹ Human Rights Council, Report of the Special Rapporteur on the promotion and protection of the rights to freedom of opinion and expression, Addendum, Tenth anniversary joint declaration: Ten key challenges to freedom of expression in the next decade, 25 March 2010, A/HRC/14/23/Add.2 at para 2.

²⁹⁰ Human Rights Council, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank la Rue, 4 June 2012, A/HRC/20/17 at paras 79 and 105.

²⁹¹ Human Rights Council, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank la Rue, 4 June 2012, A/HRC/20/17 at paras 79 and 106.

²⁹² UNESCO, International Programme for the Development of Communication (IPDC), *UN Plan of Action on the Issue of the Safety of Journalists and the Issue of Impunity*, April 2012, CI-12/CONF.202/6. at Point 5(9).

region.²⁹³ The Parliamentary Assembly of the Council of Europe has also urged member states to abolish prison sentences for defamation without delay.²⁹⁴

120. While the Human Rights Committee and the European Court of Human Rights have not held that criminal defamation laws should be repealed as such, the circumstances in which these bodies will accept them are very limited. In General Comment No 34, the Human Rights Committee has urged states to consider the decriminalisation of defamation, stating that “the application of the criminal law should only be countenanced in the most serious of cases and imprisonment is never an appropriate penalty.” Furthermore, a state should not “indict a person for criminal defamation, but then not to proceed to trial expeditiously [as] such a practice has a chilling effect that may unduly restrict the exercise of freedom of expression of the person concerned and others.”²⁹⁵
121. Although the European Court of Human Rights has indicated that criminal law sanctions for defamation are not necessarily disproportionate, it will take into account the imposition of criminal sanctions in considering the issue of proportionality.²⁹⁶ Prison sentences have by their “very nature ... a chilling effect on the exercise of journalistic freedom”.²⁹⁷ Therefore “the imposition of a prison sentence for a press offence will be compatible with journalists’ freedom of expression as guaranteed by Article 10 of the Convention only in exceptional circumstances, notably where other fundamental rights have been seriously impaired, as, for example, in cases of hate speech or incitement to violence.”²⁹⁸ A conviction for defamation involving a prison sentence for insulting public officials may therefore be found to be in violation of the Convention.²⁹⁹

VI. NON-STATE ACTORS

122. Besides states’ obligations to protect journalists and media workers from attack, the media and civil society organisations should also bear certain responsibilities. These responsibilities, as reflected in recent international initiatives, are highlighted briefly here.
123. With respect to the media itself, the Joint Declaration on Crimes Against Freedom of Expression encourages media organisations to “provide adequate safety, risk awareness and self-protection training and guidance to both permanent and freelance employees, along with security equipment where necessary.”³⁰⁰ The Special Rapporteur on extrajudicial, summary or arbitrary executions goes further in recommending both “basic and advanced security training for journalists,” appropriate training on “the increasing complexities of reporting in armed conflicts or dangerous zones” and also on “high-risk situations,” “safety training to take adequate measures to protect themselves” and also “protective gear where there is violence”. In addition, the safety of journalists and measures to protect

²⁹³ Inter-American Commission on Human Rights, Annual Report 2008. Annual Report of the Office of the Special Rapporteur for Freedom of Expression, Chapter IV (A Hemispheric Agenda for the Defense of Freedom of Expression), OEA/Ser.L/V/II.134 Doc. 5 rev. 1. 25 February 2009, para 55.

²⁹⁴ Council of Europe Parliamentary Assembly, Resolution 1577 (2007), Towards decriminalization of defamation, 4 October 2007.

²⁹⁵ Human Rights Committee, General Comment No 34 on Article 19 on freedom of opinion and expression, CCPR/C/GC/34, 11 September 2011, para 47.

²⁹⁶ European Court on Human Rights, *Radio France and others v France*, Application No 53984/00, Judgment of 30 March 2004, para 40; European Court on Human Rights, *Lindon, Otchakovsky-Laurens and July v France*, Application Nos 21279/02 and 36448/02, 22 October 2007, para 59.

²⁹⁷ European Court of Human Rights, *Mahmudov and Agazade v Azerbaijan*, Application No 35877/04, Judgment of 18 December 2008, para 51.

²⁹⁸ European Court of Human Rights, *Fatullayev v Azerbaijan*, Application No 40984/05, judgment of 22 April 2010, para 103.

²⁹⁹ European Court of Human Rights, *Cumpănă and Mazăre v Romania*, Application No 33348/96, 17 December 2004, para 116.

³⁰⁰ Joint Declaration on Crimes Against Freedom of Expression, June 2012. See also Human Rights Council, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, 10 April 2012, A/HRC/20/22 at para 145.

them should be given a central position within efforts for media reform worldwide and journalists and their families should feel “encouraged to report threats and/or violations of their right to life and seek assistance to address them”.³⁰¹ The UN Plan of Action also urges “the media industry and its professional associations, to establish general safety provisions for journalists, including, but not limited to, safety training courses, health care and life insurance, access to social protection and adequate remuneration for freelance and full-time employees.”³⁰²

124. Civil society organisations also play a key role in monitoring “the prevalence of killings of journalists, in terms of statistics and in drawing attention to specific cases,” according to the Special Rapporteur on extrajudicial, summary or arbitrary executions. Such organisations should “continue to monitor the situation with regard to the protection of journalists ... raising their concerns not only at the national level, but also at the bilateral, regional and international levels, using new technology” and more specifically “actively use the international and regional human rights machinery to focus attention on killings of journalists and situations of concern”, including the mechanisms of universal periodic review and special procedures.” Such organisations should also use strategic litigation at all levels to “develop the jurisprudence”.³⁰³ The Special Rapporteur on freedom of opinion and expression has also indicated that civil society could “work to raise awareness of the risks faced by journalists, the international standards which exist to protect them, and how these might be implemented through campaigns and training initiatives.”³⁰⁴

VII. CONCLUSION

125. This paper has shown that international and regional human rights bodies and courts have developed over the years a growing body of norms and principles on the protection and safety of journalists and media workers. Indeed, the multiplicity of sources – jurisprudence of regional courts, resolutions from UN human rights bodies, declarations and reports of international authorities and experts and the UN Plan of Action – together offer both a corpus of law as well as credible policy guidance for states in developing effective responses to violence against journalists and media workers around the world today and the related impunity that often exists. A greater awareness and understanding of this legal and policy framework by states, NGOs and the media itself would surely facilitate the implementation of states’ international obligations and responsibilities to counter the challenge of on-going violations against journalists and media workers.

³⁰¹ See also Human Rights Council, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, 10 April 2012, A/HRC/20/22 at para 145 – 147.

³⁰² Point 5.22.

³⁰³ See Human Rights Council, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, 10 April 2012, A/HRC/20/22 at para 137 – 141.

³⁰⁴ Human Rights Council, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank la Rue, 4 June 2012, A/HRC/20/17 at para 111.