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Special Conference 1 on Shifting Power Dynamics in a Globalised World

Protecting journalists and whistleblowers



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Heleen Klapwijk

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| Student Officer: | Heleen Klapwijk |
| Position: | Deputy President |

Introduction

Article 19 of the Universal Declaration of Human Rights (UDHR) states that *“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.”*

Goal 16 of the UN’s Sustainable Development Goals, “Peace, Justice and Strong Institutions,” aims to see a world where people can influence the decisions that affect their lives and create positive, peaceful environments. An essential part of making a ‘positive, peaceful society’ is the concept of “freedom of opinion and expression” and the ability to share without fear of repercussions. There should be no fear in sharing news or insights into corruption and/or crime in the workplace, in a government or in a nation. This freedom from fear must be made true and protected for both journalists as well as whistleblowers.

Journalists do their best to report from all around the world and are regularly at risk in countries or areas of conflict and reduced freedoms in the press. According to the Committee to Protect Journalists (CPJ), 1,924 journalists have been killed between 1992 and June 2020. Many more journalists have been exiled, jailed or are missing. UN Secretary-General Antonio Guterres said, “When journalists are targeted, societies as a whole pay a price. Without the ability to protect journalists, our ability to remain informed and contribute to decision-making, is severely hampered.”

A whistleblower is characterized as someone who reports about suspected misconduct and immoral or illegal actions at work or in an organization in the hope of stopping it. It is considered one of the most effective ways of exposing, fighting and fixing corruption. The most famous and recent example of Edward Snowden is that he has been forced to seek temporary asylum in Russia after having leaked classified information from the United States’ National Security Agency (NSA) in 2013.

Protection for both whistleblowers and journalists is essential in the encouragement of reporting corruption and misconduct thus protecting the basic rights of all humans. Both journalists and whistleblowers take risks in their personal and professional lives when reporting on highly volatile issues and wrongs. They regularly face adversity from large corporations, corrupt governments and strong underground cartels and alliances.



Definition of Key Terms

Whistleblower

A whistle-blower is a person who exposes / reports any kind of information (usually insider knowledge) or activity that is deemed illegal, unethical, or not correct within an organization that is either private or public.

Leaker

A leaker distributes information for personal gain – this is different from a whistle-blower.

Retaliation

Retaliation occurs when an employer (through a manager, supervisor, or administrator) fires an employee or takes any other type of adverse action against an employee for engaging in protected activity.

Journalism

The act of gathering information and making it available to part of the public (with international journalism reaching the largest audience). The UN says that journalism must be seen as an activity and profession that constitutes a necessary service for any society, as it provides individuals and society as a whole with the necessary information to allow them to develop their own thoughts and to freely draw their own conclusions and opinions. By exercising the right to “seek and receive information,” individuals can make informed decisions and express their opinions freely and participate actively in a democratic system. (A/HRC/20/17)

Impunity

The exemption from punishment or loss or escape from fines.

Freedom of Press

The power or right to express one's opinions without censorship, restraint, or legal penalty.

CPJ

An AMERICAN non-profit?

[1]

General Overview

On March 20, 2020, in the midst of a pandemic, UNESCO Assistant Director-General for Communication and Information, Moez Chakchouk, took time to voice his concern about the safety of journalists while reporting on the global COVID-19 health crisis. Stating that good and fair press was pivotal in saving lives, he added, “Journalists’ physical and psychological safety should come first.”



As mentioned in the introduction, freedom of opinion and expression and the right to a peaceful and inclusive society, are basic human rights. Not everyone has them, however, which is why this is also incorporated into the UN SDGs. Specifically, there are many instances all over the world where the basic human rights of journalists and whistleblowers are violated. Both journalists and whistleblowers play an important role in keeping democratic societies respectful of human rights – in conflict areas, areas where press-rights are limited and even in times of great chaos such as the COVID-19 pandemic.

Journalism

Journalism is the act of gathering and spreading information to the public via a wide variety of media and channels. Channels can include newspapers, magazines, or websites. Holding an important position in our society, journalists gather news from many different sources, thus allowing the public access to previously unseen information. By being able to have access to varied and broad information, the public can then make well thought-out and informed decisions. It supports the struggle for transparency and accountability.

Today, in 2020, information is more important than ever. Due to the wide scale spread of information via the internet, it is important that information and news be protected. Currently, society is seeing a large increase in manipulated and fake information being spread. Being able to make well-informed and factually based decisions is extremely important in the functioning of strong and honest societies.

With technology allowing information and news to cross borders at tremendous speeds, it is more important than ever to recognize that different countries have different rules and they need to be more aligned. Most countries agree that an international arrangement is the best way to ensure that journalists and their work is protected by a consistent and corresponding legal framework.

Journalists regularly deal with sensitive information and go to great lengths in order to obtain newsworthy items. Keep in mind the international news agencies such as Reuters, BBC and Associated Press that are regularly trying to present unbiased news as well as go to places that are not always safe. Former UN Secretary-General Kofi Annan once said that “Knowledge is power. Information is liberating. Education is the premise of progress, in every society, in every family.” Keeping in mind the number of journalists killed since 1992 (1,924) and that 16 have already been killed this year (as per 26 June 2020), it is imperative that journalists are protected in order to allow them to continue carrying out their goal of informing the public.

[2] Whistleblowing

In the above-mentioned struggle for accountability and transparency, whistleblowers, like journalists, fulfil a very important role in a society filled with human error, bad choices and corruption. The role of the whistleblower crosses fields and boundaries. Consider the fact that they save citizens across the globe billions of euros in taxes. In 2014, in the United



States, for example, the US Department of Justice recovered \$3.5 billion in False Claims Act cases which were started by whistleblowers. As people who have unique vantage points from inside companies that government agencies cannot reach, consider that whistleblowers can help with public health situations. Look at pharmaceutical and healthcare companies where whistleblowers bring to light unlawful billing and drug-promotional kickbacks that can adversely affect public health. Also consider the case of the UK nurse who released information on how persons with learning disabilities were being abused. After the whistleblowing took place, health care for those with learning disabilities improved dramatically.

[3] Despite many attempts to increase protection, whistleblowers still fear retaliation. Depending upon where the whistleblower is, the type of retaliation can vary – from being harassed at work to losing a job to losing credibility or benefits to losing a life. Consider the case of the Wuhan Chinese doctor, Li Wenliang who tried to issue a warning on 30 December 2019 to his fellow medics. He wanted them to wear protective clothing and avoid infection. He was summoned by the Chinese Public Security Bureau and forced to sign a letter as they accused him of “making false comments.” Some wonder at how many coronavirus infections could have been prevented had China’s command and control system been more open to Dr Wenliang’s message.

Major Parties Involved

United Nations Office on Drugs and Crime (UNODC)

The United Nations Office on Drugs and Crime (UNODC) is a global leader in the fight against illicit drugs, transnational organized crime, terrorism and corruption, and is the guardian of most of the related conventions, particularly The United Nations Convention against Corruption (UNCAC).

United Nations Convention against Corruption (UNCAC)

During the UN Convention against Corruption (UNCAC) by the (UNODC), an entire document entitled “Reporting on Corruption: A Resource Tool for Government and Journalists” was created. They did this in an effort to gather information as well as good practices in promoting responsible and professional reporting by journalists on corruption.

Democratic People’s Republic of Korea

The Democratic People’s Republic of Korea blocks and filters the media as it is owned and controlled by the government. The result is that while no official killings of journalists or whistleblowers is known, they have been ranked the last (180 out of 180) in the Press Freedom Index (PFI) since 2013 and are almost last (together with



Afghanistan and Somalia) on the Corruption Perceptions Index (CPI) for countries lacking strong accountable leaders who are open to whistleblowing.

Russian Federation

The Human Rights Watch has accused the Russian government of controlling civil society through “selective implementation of the law, restriction and censure.” 90% of all murder cases against journalists remain unresolved.

South Sudan

The government has been known to confiscate newspapers and threaten radio stations with closure. In 2014 the Human Rights Watch and Amnesty International accused the National Security Service of harassing and detaining journalists and almost all murderers of journalists have gone un-convicted.

United States

While the US has many laws and agencies in place to protect journalists and whistleblowers (Whistleblower Protection Enhancement Act, Enhancement of Contractor Protection, etc.) and the Whistleblower Protection Act (WPA), US authorities are still wanting to prosecute whistle-blower Edward Snowden for leaking thousands of classified documents detailing Western espionage programs. It raises questions on ethics and the fine line between espionage and journalism, between blowing the whistle on corrupt actions and treason.

Saudi Arabia

Ranked 170 (out of 180) in the 2020 PFI, Saudi Arabia is low on freedom of the press. Most media is banned and what is present is under constant surveillance. Their scores for whistle-blower protection legislation and enforcement are also very low due to the fact that this is a monarchy and to express dissent is to express lack of support for the government / monarchy. It is, however, highly placed on the CPI (2019 data has it in 51st place).

Turkey

Turkey blocks access to websites such as Twitter and YouTube and is known both to closely monitor as well as close websites that do not suit the government. It is in the 154th place in 2020 PFI countries and has the world’s largest prison for professional journalists.

Cuba

Ranked almost at the bottom of PFI at 171 in 2020, media in Cuba is operated by the Communist Party and restricts almost all types. Censorship



is wide-ranging. The Constitution of Cuba mentions freedom of speech, but it is slow in implementing it.

Vietnam

Vietnam, in 175th place, regulates its citizens. The internet censorship laws prevent Vietnamese's Access to websites that are critical of the Vietnamese government, expatriate political parties, and international human rights organizations, among others. Vietnam's media censorship affects international journalists as well, as they are to be monitored closely, restricting their actions, despite that they are mostly free to write cynical articles regarding the Vietnamese government. On the CPI, however, it is worth noting it is in 96th place (out of 198), up 21 places since the 2012 report.

Iran

173rd place. The majority of the censorship is implemented or mandated by the Iranian government, primarily by the Ministry of Culture and Islamic Guidance, concerning pornography, certain news sources and certain religious content. In a political lens, the censorship is advocated as a measure to maintain the stability of the country.

People's Republic of China

Censorship in China is implemented by the Communist Party of China, therefore the Chinese government has long kept tight reins on both traditional and new media to avoid potential subversion of its authority.

The Chinese government maintains censorship over all media capable of reaching a wide audience. This includes television, print media, radio, film, theater, text messaging, instant messaging, video games, literature, and the Internet.

They recently made news regarding whistleblowers because of Li Wenliang, a Chinese doctor who tried to issue the first warning about the deadly coronavirus outbreak.

Myanmar

Although freedom of speech and the press is still not guaranteed by law, several developments have been made in law, affecting the daily lives of the citizens. Media is deeply polarized along political lines and the government maintains tight control over the sector through various methods, including physical violence and verbal threats. Private media sector ownership has increased drastically in the recent years in Myanmar, although state-affiliated outlets continue to hold a dominant position.

Timeline of Key Events



| <u>Date</u> | <u>Description of Event</u> |
|--------------------|--|
| 1863 | The False Claims Act (FCA) in the United States originally signed by US President Lincoln in order to target fraud in government contracting. |
| 1948 | The Universal Declaration of Human Rights (UDHR) was drafted and proclaimed by the United Nations on December 10, 1948, as a common standard of achievement for all peoples and all nations. |
| 1989 | The Whistleblower Protection Act, amended by the United States of America to protect federal whistleblowers who work for the government and report misconduct. |
| 1992 | Mustafa Jaha, who worked for the paper Al-Amal, was shot and killed. He was an outspoken critic of Ayatollah Khomeini, founder of the Islamic Republic of Iran. |
| 2007 | Official launch of WikiLeaks, a non-profit media organization that provides important news and information to the public in order to defend freedom of speech and media publishing. |
| 2008 | Launch of Reporters Without Borders (RWB) a non-profit, non-governmental organization that promotes and defends freedom of information and freedom of press. |
| 2010 | UN Plan of Action on the Safety of Journalists and the Issue of Impunity was endorsed. |
| 2012 | Julian Assange seeks asylum in Ecuador's embassy in the United Kingdom, in order to avoid extradition. |
| 2013 | Edward Snowden leaks classified documents belonging to the US NSA. As a result, at least seven constitutional suits have been launched in the US. |
| 2015 | 8 Journalists are killed in Paris during a terrorist attack on satirical newspaper Charlie Hebdo. |
| 2019 | Adoption of the Whistleblower Protection Directive by the European Union. The primary purpose of this Directive is to protect whistleblowers who reported certain breaches of EU law via the internal or external reporting channels provided by the Whistleblowing Directive in good faith. |

UN involvement, Relevant Resolutions, Treaties and Events



- UN Human Rights Council Resolution 27/5 on the safety of journalists, 2014 (A/HRC/RES/27/5)
- UN General Assembly Resolution 70/162 on the safety of journalists and the issue of impunity, 2014 (A/RES/70/162)
- UN General Assembly Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, 2015 (A/70/361)
- UN Human Rights Council Resolution 33/2 on the safety of journalists, 2016 (A/HRC/RES/33/2)
- UNESCO 39th General Conference Resolution on strengthening UNESCO's leadership in the implementation of the UN Plan of Action on Safety of Journalists and the Issue of Impunity, 2017 (39 C/61)
- UN Human Rights Council Resolution 39/6 on the safety of journalists. Especially article 19, 2018 (A/HRC/RES/39/6)
- UN General Assembly Resolution 74/157 on the safety of journalists and the issue of impunity, 2019 (A/Res/74/157)

Previous Attempts to solve the Issue

The UN Plan of Action on the Safety of Journalists and the Issue of Impunity is a comprehensive UN plan which aims to create a safe work environment for journalists and media workers, working both in conflict and non-conflict zones. As an attempt to resolve the crucial problems journalists were facing, UN organizations led by UNESCO, developed this plan which is the first UN plan to address the issue. The UN Plan follows an approach that has many different parties involved such as media, civil society, UN agencies and international organizations.

On April 30, 2014, The Council of Europe adopted The Declaration of the Committee of Ministers on the Protection of Journalism and Safety of Journalists and Other Media Actors. This declaration condemns – in very strong terms – and expresses their concerns regarding the treatment journalists constantly experience.

UNESCO's 29th session of the General Conference (Paris, November 12, 1997) agreed to Resolution 29. Resolution 29 is the condemnation of violence against journalists. It recognizes violence against journalists as a crime against society since it curtails the freedom of expression. It goes so far as to invite the Secretary General to condemn assassination and any physical violence.

Adopted on World Press Freedom Day in 2007, the Medellin Declaration generally asks for the promotion of awareness towards the inhumane treatment implemented on journalists in danger zones as well as the immediate release of the detained ones.

In 2015, the Special Rapporteur's report to the UN General Assembly focused on the protection of sources and whistleblowers around the world. It reviewed national and



international laws and practices and provided recommendations to improve available protections. As part of the preparations for this report, the Special Rapporteur issued calls for submissions from Governments and Civil Society. The many States and NGOs that responded to the call supplied the report with a good number of recommendations that should help improve the protection of sources and whistleblowers. See A/70/361.

Whistleblower protection requirements have been introduced in The United Nations Convention Against Corruption (UNCAC), however many countries that ratified the Convention still lack legislative measures for protection, or the means to use them.

Possible Solutions

UN agencies and programs that are currently involved in ensuring safety for journalists and whistleblowers should continue to be funded and receive positive exposure. As an example, consider the following: Office of the High Commissioner for Human Rights, UNESCO, UN Department of Public Information, UN Department of Political Affairs and UN Department of Peacekeeping Operations.

Support and funds should be provided to the Transparency International (TI) organization. In addition, their “Best Practices” should be encouraged and implemented. This should be at the international level if one a whistleblower who might cross borders. If it is not internationally accepted, it is possible that relationships between countries could deteriorate as opinions regarding the treatment of whistleblowers might not be made clear. The international community should look for a way to enforce ethics through solid rules and a destination for rule-breaking whistleblowers. The TI is present in most countries and needs help in a number of other countries.

Continuing on the previous possible solution is the Annex to the 2011 G20 Summit Report on Anticorruption. The Annex, entitled “G20 Compendium of Best Practices a Guiding Principles for Legislation on the Protection of Whistleblowers,” can be used to set up an international legal platform to help protect whistleblowers.

Support the International Press Institute (IPI) and its 2016 “The International Declaration on The Protection of Journalists.” Provide the IPI with State as well as government support and funds in its quest to protect journalists. For example, spread the message created by the IPI that journalists require protection both in media institutions not sending them out on dangerous assignments as well as back up to state institutions that will end “impunity in crimes against journalists.”

The United Nations Office on Drugs and Crime (UNODC) should look for some manner to enforce ethical treatment of whistleblowers. Consider that laws be created and upheld by governments to work alongside the International Criminal Court of Justice (ICCJ). Protection to whistleblowers and sources should be supplied --- this can be protection



against violence, but also against retaliation. For example, States and international organizations should establish personal liability for those who do retaliate.

A safe way of reporting needs to be put in place at the international level. For both journalists who fear for their lives and whistleblowers who fear for their livelihood, there should be ways to communicate this. For example, a number of G20 countries have established hotlines. Perhaps an international hotline would be an idea to encourage and protect whistleblowers and journalists alike.

[4]

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Wikileaks? freedom of press? CPJ? More key terms could be added.

Try to divide this section by what journalism is and what role it plays in the current global climate.

Talk about Snowden as well and the amount of classified documents were released.

This is one thing I have noticed in this section, you need to make sure you are not giving the delegates actual solutions to the issue at hand. Rather, try to steer them in the right direction.

