

Response to the call for inputs to inform the United Nations' Special Rapporteur on the Situation of Human Rights Defenders' report on "Human Rights Defenders working on Anti-corruption"

Submission by the Foreign Policy Centre and the Justice for Journalists Foundation¹
15 October 2021

Context ²

Investigative journalists around the world have repeatedly demonstrated their critical role in uncovering financial crime and corruption, the first step in ensuring accountability and redress³. While journalists are not automatically considered to be human rights defenders (HRDs), the United Nations' Special Rapporteur on the Situation of HRDs has recognised that journalists can act as HRDs, and moreover that they are a subgroup of HRDs that is among those most at risk⁴. Journalists, often in tandem with whistleblowers, activists and wider civil society, act as a public watchdog, uncovering information and holding power to account, thereby supporting the protection of broader rights.

In recent years successive transnational investigations, conducted by global networks of several hundred journalists, have provided explosive insights into how political and business elites, as well as organised crime groups, all over the world have avoided law enforcement and misused financial and legal systems to facilitate the theft of public funds, tax avoidance, money laundering, bribery and other forms of crime and corruption. In some countries, the fallout of these investigations has led to high profile resignations; changes to financial regulation; arrests and indictments against criminal figures; as well as the recovery of several billion in fines and seizure of illicit funds.⁵ Meanwhile, several journalists involved in bringing this

¹ The Foreign Policy Centre (FPC) is an outward-looking, non-partisan international affairs think tank based in the UK. Since July 2020, FPC has been examining the risks and threats to journalists who uncover financial crime and corruption, particularly where there is a link to the United Kingdom (UK), as part of its Unsafe for Scrutiny project. Under this project, funded by the Justice for Journalists Foundation (JFJ), FPC has produced a series of publications that examine the repercussions for journalists working on anti-corruption as well as recommendations to address this issue. FPC's contribution to this submission is based on the findings of the Unsafe for Scrutiny research programme and any views expressed are those of its Project Director, Susan Coughtrie. JFJ is a London-based non-governmental organization created in 2018 with a mission to facilitate journalists' access to existing resources and make them relevant to the specifics of each region. JFJ funds journalistic investigations into violent crimes against media workers and helps professional and citizen journalists to mitigate their risks. Among projects supported by the JFJ are several focusing on SLAPPs and legal threats against journalists. JFJ also maintains a risk map via monitoring, analysing and publicising attacks against media workers. To note, FPC and JFJ as part of the UK anti-SLAPP coalition have made another submission under this call which specifically focuses on legal threats and strategic lawsuits against public participation (SLAPPs) to suppress information about corruption, so this issue is only briefly covered here.

² Context based on excerpts from FPC's publication Unsafe for Scrutiny: Examining the pressures faced by journalists uncovering financial crime and corruption around the world, November 2020, <https://fpc.org.uk/wp-content/uploads/2020/11/Unsafe-for-Scrutiny-November-2020.pdf>

³ The UN Office of the High Commissioner for Human Rights refers to journalists as HRDs as follows "many journalists do act as defenders, for example when they report on human rights abuses and bear witness to acts that they have seen" <https://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Defender.aspx#ftn1>

⁴ Tamsin Mitchell, Journalists as Human Rights Defenders: International Protection of Journalists in Contexts of Violence and Impunity, Reporting Human Rights, Conflicts, and Peacebuilding (pp.221-242), 2019 - https://www.researchgate.net/publication/332306898_Journalists_as_Human_Rights_Defenders_International_Protection_of_Journalists_in_Contexts_of_Violence_and_Impunity

⁵ OCCRP, Impact to Date, Update: 21 August 2021, <https://www.occrp.org/en/impact-to-date> ; ICIJ Story, <https://www.icij.org/about/icijs-story>; Douglas Dalby and Amy Wilson-Chapman, Panama Papers helps recover more than 1.2

information to light have been subject to a backlash - facing increased threats, harassment, including arrest and imprisonment, violence and in the most extreme cases, murder in their home countries.

Violence against journalists working on anti-corruption

According to the Committee to Protect Journalists, 302 journalists working on corruption issues from places as widespread as Brazil, Mexico, Russia, Ukraine, India and the Philippines have been murdered, bringing the total since their records began in 1992.⁶ Of these 212 have been conducted with complete impunity, undoubtedly creating a chilling effect⁷.

The murder of two investigative journalists linked to transnational networks investigating corruption have caused considerable shockwaves in recent years, having taken place inside of European Union (EU) countries. The Maltese investigative journalist Daphne Caruana Galizia was assassinated, aged 53, in a car bomb outside her home on 16 October 2017. She self-published her investigations into dodgy political and business dealings on her blog Running Commentary. Over the course of the year prior to her murder she posted several allegations about corruption amongst her country's political elite linked to the Panama Papers revelations.⁸ A few months later, on 21 February 2018, the Slovak investigative journalist Ján Kuciak and his finance Martina Kušnírová, both 27, were shot dead near their home. Kuciak worked for the website Aktuality.sk and covered issues ranging from tax fraud among Slovak businessmen with political ties to potential embezzlement of EU funds. At the time of his death, he had been working on an investigation with OCCRP, Investigace.cz, and the Investigative Reporting Project Italy (IRPI) on infiltration of an Italian criminal group into Slovakia.⁹

Murder however is rarely the starting point. Journalists will usually face an escalating range of threats and attacks. However, as a 2018 report by Index on Censorship found, investigative journalists often “under-report incidents they consider minor, commonplace or part of the job, or where they fear reprisals.”¹⁰ This lack of reporting might be for a number of reasons – threats may seem less significant taken individually; there might be a lack of trust in the local authorities to properly investigate or in the judicial system, meaning the effort taken to report violations may be seen to outweigh the potential outcome; and/or the reporting process may be time consuming due to the volume and frequency of certain types of threats or harassment (for example, trolling on social media). Journalists may simply prefer to focus their efforts on the stories at hand rather than their individual challenges while reporting on them.

The impunity with which violence can be carried out is often in step with those countries with the highest level of corruption¹¹. It is unsurprising, therefore, that these are often authoritarian states where respect

billion around the world, ICIJ, April 2019, <https://www.icij.org/investigations/panama-papers/panama-papers-helps-recover-more-than-1-2-billion-around-the-world>

⁶ CPJ, 302 Journalists Killed: between 1992 and 2021/ Motive Confirmed / Murdered / Coverages includes Corruption, https://cpj.org/data/killed/?status=Killed&motiveConfirmed%5B%5D=Confirmed&type%5B%5D=Journalist&coverages%5B%5D=Corruption&start_year=1992&end_year=2021&group_by=year

⁷ CPJ, 212 Journalists Killed between 1992 and 2020 / Motive Confirmed / Murdered / Complete impunity / Coverages includes Corruption

https://cpj.org/data/killed/?status=Killed&motiveConfirmed%5B%5D=Confirmed&type%5B%5D=Journalist&typeOfDeath%5B%5D=Murder&typeOfDeath%5B%5D=in%3Aimpunity%3AComplete%20Impunity&coverages%5B%5D=Corruption&start_year=1992&end_year=2020&group_by=year

⁸ ICIJ, The Panama Papers: Exposing the Rogue Offshore Finance Industry, <https://www.icij.org/investigations/panama-papers/>

⁹ OCCRP, A Murdered Journalist's Last Investigation, <https://www.occrp.org/en/amurderedjournalistslastinvestigation/>

¹⁰ Index on Censorship, Targeting the messenger: Investigative journalists under extreme pressure, December 2018, <https://www.indexoncensorship.org/targeting-the-messenger-investigative-journalists-under-extreme-pressure/>

¹¹ See Transparency International's Corruption Perceptions Index - <https://www.transparency.org/en/cpi>

for independent journalists is already low and the wider environment for media freedom is restrictive. Moreover, threats and harassment against journalists, as well as other HRDs, regardless of type, generally have to be funded. Perhaps with the exception of uncoordinated social media trolling or individual retribution, typically the instigator needs to hire or bribe an intermediary(ies) to carry out their threats. Corrupt figures able to get away with financial crime are presumably well-resourced to utilise these funds to try to prevent scrutiny into their wrongdoing, contributing to a broader suppression of information of public importance.

In some countries, where the space for civil society and democratic debate is limited, the line between journalists and other HRDs can be very blurred with individuals taking on multiple, overlapping roles. It is possible for the same person to be uncovering information, and advocating for change and protecting rights of others, including other HRDs.

Risks and threats to journalists working on financial crime and corruption

In November 2020, FPC's report *Unsafe for Scrutiny: Examining the pressures faced by journalists uncovering financial crime and corruption around the world*, published the findings of a global survey of 63 journalists working on financial crime and corruption in 41 countries¹². The survey was conducted from 2 September to 16 October 2020 with the support of the Organized Crime and Corruption Reporting Project (OCCRP), the International Consortium of Investigative Journalists (ICIJ) and the Global Investigative Journalism Network (GIJN). The findings provide insights into the most frequently utilised forms of threats and harassment against journalists working on corruption:

- The majority **(71%) of respondents reported experiencing threats and/or harassment** while working on investigations into financial crime and corruption.
- Of those, almost all had been subject to **verbal threats (81%), trolling on social media (79%) and written threats (70%)**.
- **Civil legal cases**, especially the use of cease and desist letters, **surveillance, both on and offline, interrogation by authorities and smear campaigns, were also experienced by more than 50%** of these respondents.
- Incidences of **threats or harassment that have notable psychological impact** – such as trolling, verbal and written threats, smear campaigns, and blackmail – **were the most highly reported** (35% of all incidences reported).
- **Legal threats were strongly highlighted by survey respondents as an area of particular concern**. 73% of all respondents experiencing threats had received communication(s) threatening legal action as a result of information they had published. **The United Kingdom (UK) was by far the most frequent country of origin for legal threats**, other than the journalists' home countries. The UK was almost as frequently a source of these legal threats as the EU countries and the United States combined. **Defamation pursued as a civil case was by far the most frequently given reason behind legal communication(s) to respondents (91%)**.
- At least 61% of respondents reported their investigations had uncovered a link (directly or indirectly) with UK financial and legal jurisdictions.
- **The resources that respondents identified as the most valuable while reporting on financial crime and corruption also overlapped with those they identified as the most lacking**, namely legal aid and counsel, financial support and whistleblower protections.

¹² Unsafe for Scrutiny: Examining the pressures faced by journalists uncovering financial crime and corruption around the world, November 2020, <https://fpc.org.uk/wp-content/uploads/2020/11/Unsafe-for-Scrutiny-November-2020.pdf>

Aside from the impact of legal threats, which came out strongly in the findings, fears regarding the potential for violence within EU countries was also notable. One respondent, a woman journalist working in an EU country, when asked how the situation had changed in recent years, stated *“I did not believe someone can kill me for my work. Now I do believe.”*¹³

Examples of journalists targeted as a result of their work on corruption

Below are some examples of violence against, or harassment of, journalists working on corruption. These are taken from FPC and JFJ’s research and are intended to be indicative of the problem faced, rather than a fulsome picture.¹⁴

- **Azerbaijan**¹⁵ - Khadija Ismayilova, a prominent independent investigative journalist who has been instrumental in uncovering corruption at the highest levels of Azerbaijani society, has been subject to a wide variety of harassment over the last decade, from blackmail to public shaming, accusations of espionage, judicial persecution and arbitrary imprisonment¹⁶. In February 2020, the European Court of Human Rights (ECtHR) found that Ismayilova’s rights had been violated when she was arrested in December 2014 and subsequently sentenced to seven and half years as there was no ‘reasonable suspicion’ she committed the crime she was accused of, rather it was an attempt to silence her journalism.¹⁷ While Ismayilova was released from prison in May 2016, her sentence has not been overturned and – despite several ECtHR rulings in her favour - she was still subject to probationary measures, including a travel ban, until 2021.¹⁸
- **Kazakhstan**¹⁹ - On 1 May 2021, the First Deputy Chairman of the ruling party «Nur Otan» Bauyrjan Baibek filed a lawsuit on the protection of honour, dignity and business reputation to the opposition journalist, blogger and political activist Zhanbolat Mamai and his wife - journalist Inge Imanbai. The cause of the lawsuit was his YouTube film titled “Bauyrjan Baibek: corruption business-empire of the son of Nazarbaev’s classmate”²⁰.

¹³ Unsafe for Scrutiny, November 2020, page 25.

¹⁴ FPC and JFJ as part of the UK anti-SLAPP coalition have made another submission under this call which specifically focuses on legal threats and strategic lawsuits against public participation (SLAPPs) to suppress information about corruption, so this issue is only briefly covered here.

¹⁵ Azerbaijan was rated 129/198 in Transparency International’s Corruption Perceptions Index for 2020 (<https://www.transparency.org/en/cpi>) and 167/180 in 2021 Reporters without Borders World Press Freedom Index (<https://rsf.org/en/ranking>)

¹⁶ Azerbaijan: ECHR ruling confirms government failing to protect journalists from abuse, ARTICLE 19, January 2019, <https://www.article19.org/resources/azerbaijan-echr-ruling-confirms-government-failing-to-protect-journalists-from-abuse>

¹⁷ Amal Clooney and Nani Jansen Reventlow, European Court of Human Rights rules in favour of Azerbaijani journalist Khadija Ismayilova, Doughty Street Chambers, February 2020, <https://www.doughtystreet.co.uk/news/european-court-human-rights-rules-favour-azerbaijani-journalist-khadija-ismayilova>

¹⁸ RFE/RL, Azerbaijan Urged To Lift Journalist’s ‘Unjust’ Travel Ban, Azerbaijan, RFE/RL, January 2020, <https://www.rferl.org/a/azerbaijan-urged-to-lift-journalist-s-unjust-travel-ban/30380414.html>; To note, two other ECtHR judgements – handed down in 2019 and 2020 – have been found in Ismayilova’s favour in connection to a 2012 smear campaign, which involved state sponsored newspapers publishing a sex tape taken by hidden cameras in her flat and the authorities failure to investigate, violating her rights to privacy and freedom of expression (See: European Court’s third ruling in favour of journalist Khadija Ismayilova is ultimate indictment of Azerbaijani authorities, Amnesty International, May 2020, <https://www.amnesty.org/en/latest/news/2020/05/european-courts-third-ruling-in-favour-of-journalist-khadija-ismayilova-is-ultimate-indictment-of-azerbaijani-authorities/>).

¹⁹ Kazakhstan was rated 94/198 in Transparency International’s Corruption Perceptions Index for 2020 and 155/180 in 2021 Reporters without Borders World Press Freedom Index.

²⁰ ACCA, Казахстан: бывший мэр Алматы подал в суд на оппозиционного журналиста и его жену, 1 May 2021, <https://acca.media/kazakhstan-byvshij-mer-almaty-podal-v-sud-na-oppozitsionnogo-zhurnalista-i-ego-zhenu/>

- **Kyrgyzstan**²¹ - In November 2019, a joint investigation by RFE/RL's Radio Azattyk, OCCRP, and Kloop exposed significant corruption in Kyrgyzstan's customs service, including the transfer of more than \$700 million out of the country.²² The money was being sent "to Germany, the United Kingdom, the United States, and Dubai — countries where ... large real estate investments [were being made]."²³ Almost immediately legal action was launched domestically by those named in the report, which led to the Kyrgyz courts to seemingly fast-track the freezing of the media organisations' assets, a decision which was later reversed in response to international outcry.²⁴ Starting even prior to the release of the investigation many of the journalists involved have experienced harassment, including threats, police investigations, arrest, physical attacks and online trolling.²⁵ In April 2020, a former Kyrgyz customs official stated that he was told to bring Ali Toktakunov, the journalist who led the joint investigative team, and now based in Prague, back to Kyrgyzstan "dead or alive."²⁶ In October 2020, in a separate incident, a Kyrgyz blogger Erkezhan Isakova received a parcel in which she found the cut off dog's head wrapped in polyethylene. On her social media page, she wrote that she attributed the message to her activities and perceived it as a sign of threat, as she frequently wrote about corruption and public concern matters²⁷.
- **Russia**²⁸ - Russia's 2012 law on foreign agents originally targeting nongovernmental organizations receiving grants from abroad has since been amended to go after not only media organizations but also individual journalists, YouTube bloggers, human rights lawyers and practically anyone else who receives money from abroad and voices a political opinion²⁹. Roman Badanin, editor-in-chief of the investigative media outlet Proekt was subject to multiple kinds of pressure including searches, illegal surveillance, as well as a visit to his relatives by the head of the Federal Security and Anti-Corruption Project, who came to house of the former wife of Roman Badanin and tried to film his children on the phone. Roman Anin, editor-in-chief of the Important Stories, was interrogated, his apartment was searched and equipment was confiscated³⁰. There were numerous attempts to hack his social media accounts as well: on December 18, 2020, there was an attempt to hack Anin's phone after the release of the investigation about Vladimir Putin's daughter and former son-in-law. The hacking attempts took place after Putin's press conference, where he first commented on the investigation about his relatives and accused the authors of working for Western intelligence services.
- **Ukraine**³¹ - On October 30, 2020, unknown people brutally beat the journalist Volodymyr Grabovenko. As a result, he had a fracture of the bones on his right leg and right forearm, and several bruises on his

²¹ Kyrgyzstan was rated 124/198 in Transparency International's Corruption Perceptions Index for 2020 and 79/180 in 2021 Reporters without Borders World Press Freedom Index.

²² Plunder and patronage in the heart of Central Asia, OCCRP, November 2019, <https://www.occrp.org/en/plunder-and-patronage/>

²³ RFE/RL, OCCRP, and Kloop, A Real Estate Empire Built on Dark Money, OCCRP, December 2019, <https://www.occrp.org/en/plunder-and-patronage/a-real-estate-empire-built-on-dark-money>

²⁴ Catherine Putz, After Exposing Corruption, Media Under Pressure in Kyrgyzstan, The Diplomat, December 2019, <https://thediplomat.com/2019/12/after-exposing-corruption-media-under-pressure-in-kyrgyzstan/>

²⁵ RFE/RL Kyrgyz Service investigative reporter receives death threat, U.S. Agency for Global Media, April 2020, <https://www.usagm.gov/2020/04/07/rfe-rl-kyrgyz-service-investigative-reporter-receives-death-threat/>

²⁶ Ayzirek Imanaliyeva, Kyrgyzstan: Former Matraimov protégé alleges plot against journalist, Eurasianet, April 2020, <https://eurasianet.org/kyrgyzstan-former-matraimov-protége-alleges-plot-against-journalist>

²⁷ JFJ, Erkezhan Isakova (Elvira Niyazbekova), 27 October 2020, <https://jfi.fund/jfi/erkezhan-isakova-elvira-niyazbekova>

²⁸ Russia was rated 129/198 in Transparency International's Corruption Perceptions Index for 2020 and 150/180 in 2021 Reporters without Borders World Press Freedom Index.

²⁹ Dmitry Velikovskiy, Investigative journalism in today's Russia, and why the UK's stance could actually make a difference, FPC, 9 December 2020, <https://fpc.org.uk/investigative-journalism-in-todays-russia-and-why-the-uks-stance-could-actually-make-a-difference/>

³⁰ Andrew Roth, Russian police raid home of prominent journalist Roman Anin, The Guardian, 10 April 2021, <https://www.theguardian.com/world/2021/apr/10/russian-police-raid-home-of-prominent-journalist-roman-anin>

³¹ Ukraine was rated 117/198 in Transparency International's Corruption Perceptions Index for 2020 and 97/180 in 2021 Reporters without Borders World Press Freedom Index.

head. The journalist was taken to Volnovakha Central District Hospital. Attack on the journalist is linked with his professional activities, as he was working on anti-corruption investigations.³²

- **United Kingdom**³³ - British journalists, including Clare Rewcastle Brown and Dan McCrum, have spoken about the variety of threats they have experienced while investigating corruption - from legal threats, surveillance, online harassment and how this connects to the wider phenomenon of reputation management. In the course of his five-year investigation into Wirecard, a German financial technology firm, the Financial Times reporter McCrum described being subject to “furious online abuse, hacking, electronic eavesdropping, physical surveillance and some of London’s most expensive lawyers.”³⁴ Rewcastle Brown, who uncovered the 1MDB corruption scandal in Malaysia, notes how law firms operate in combination with a network of public relations consultants, corporate investigators and private protection agencies against journalists- *“The growth industry known as ‘reputation management’ ... [act] together to protect some of the world’s most powerful, wealthy and dangerous individuals from rightful scrutiny and discovery by our free media.”*³⁵ Rewcastle Brown has also had arrest warrants issued in Malaysia, which has led to at least one attempt to secure an interpol notice³⁶. Civil society support and reporting threats against Rewcastle Brown to mechanisms like the Council of Europe Media Alert Platform appear to have had a positive effect on dropping potential legal threats³⁷.
- **Uzbekistan**³⁸ - On 22 July 2020 “handlers” at one of the law-enforcement agencies compelled the administrator of the Telegram channel Troll.uz Umid Gafurov to remove a post about corruption in the period of the pandemic. He had conducted an anonymous survey among readers and had brought to light that patients were signing receipts that they had supposedly undergone a course of treatment costing 3 thousand dollars, for which they were promised monetary compensation. Several dozen people had confirmed the fact of corruption³⁹.

Recommendations

- Stronger coordination between UN mechanisms and mandate holders to show support for journalists subject to violations as a result of their work on corruption, recognising their role as a public watchdog and how they enable other HRDs to support the fulfilment of broader rights.
- States should recognise the vital role that journalists play in creating transparency and accountability (through regular public statements by the State officials, public denouncement of any threats and attacks on journalists and refraining from making statements that could put them at risk), and connect this to Government strategies to counter financial crime and corruption facilitated within its borders;

³² Institute of Mass Information, Journalist in Donbas beaten with baseball bats, 06 November 2020, <https://imi.org.ua/en/news/journalist-in-donbas-beaten-with-baseball-bats-i3607>

³³ The United Kingdom was rated 11/198 in Transparency International’s Corruption Perceptions Index for 2020 and 33/180 in 2021 Reporters without Borders World Press Freedom Index.

³⁴ Dan McCrum, Wirecard and me: Dan McCrum on exposing a criminal enterprise: Intimidation, surveillance and conspiracy theories: inside the FT’s five-year investigation of a billion-dollar fraud, 3 September 2020, <https://www.ft.com/content/745e34a1-0ca7-432c-b062-950c20e41f03>

³⁵ Clare Rewcastle Brown, A scandal of corruption and censorship: Uncovering the 1MDB case in Malaysia, 9 December 2020, <https://fpc.org.uk/a-scandal-of-corruption-and-censorship-uncovering-the-1mdb-case-in-malaysia/>

³⁶ Index on Censorship, Interpol must clarify its involvement in the arrest warrant issued against British journalist Clare Rewcastle Brown, 29 September 2021, <https://www.indexoncensorship.org/2021/09/interpol-must-clarify-its-involvement-in-the-arrest-warrant-issued-against-british-journalist-clare-rewcastle-brown/>

³⁷ Council of Europe Media Alert Platform, Journalist Clare Rewcastle Brown Subject to Legal Harassment from London Law Firm on behalf of Kuwaiti Investment Advisor, 17 June 2021, <https://go.coe.int/W3mDc>

³⁸ Uzbekistan was rated 146/198 in Transparency International’s Corruption Perceptions Index for 2020 and 157/180 in 2021 Reporters without Borders World Press Freedom Index.

³⁹ Shahida Tulaganova, An independent expert opinion about Attacks on media workers in Uzbekistan report, JFJ Report 2020, https://jfi.fund/report-2020_2/#uzb

- States should ensure that no anti-corruption journalists are killed, attacked or threatened for their work and increase accountability for killings, attacks and threats;
- States should adopt specific legislation to prohibit, investigate and prosecute online threats and ensure that this legislation adequately protects women journalists, especially those with intersecting marginalised identities;
- Social media companies should quickly and efficiently respond to the journalists' requests to remove online threats and close down accounts of those making the threats.