

Written Evidence from Dr Sejal Parmar* (GMF0022)

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SUMMARY OF RECOMMENDATIONS

- **The FCO's commitment to the defence of "global media freedom" through a dedicated campaign in 2019 is commendable.**
- **The UK's compliance with its international obligations on media freedom – particularly Article 19 of the International Covenant on Civil and Political Rights ("ICCPR") – should be the indicator of the UK's reputation on media freedom terms. In this regard, the UK's record before international human rights treaty- and UN Charter-based bodies is highly relevant.**
- **The FCO should produce a single comprehensive public document detailing in concrete terms all the campaign on media freedom's elements, objectives, range of activities, budgetary implications and indicators of success.**
- **The legitimacy and effectiveness of the campaign, as well as its presumed follow-up, depends on the UK's own credibility on the protection of media freedom. This itself hinges on the coherence and consistency within and across the UK's foreign and domestic policies.**
- **The UK government should implement the UK's new "Magnitsky law" to provide individual accountability for gross violations of media freedom.**
- **The FCO should commit to strengthening the "international law-based system" on media freedom.**
- **The FCO should correct its assumption that a "UN Convention on Journalist Protection" exists as it does not.**
- **The FCO should firmly situate its campaign on global media freedom within the normative framework of international human rights law on freedom of expression, particularly Article 19 of the ICCPR, as well as its authoritative interpretation by the Human Rights Committee, detailed recommendations of the Special Rapporteur on freedom of opinion and expression, and resolutions of the Human Rights Council, General Assembly and Security Council.**
- **Human Rights Council resolution 39/6, which was adopted on 27 September 2018, should be at the heart of the FCO campaign on media freedom.**
- **The FCO should consider more carefully the arguments for and against the proposal for a Special Representative of the Secretary-General for the safety of journalists, and come to a position as to whether it supports the proposal.**
- **The FCO should bolster the efforts of established international mechanisms on media freedom issues. It should urge the Secretary-General to convene a high-level international investigation into the murder of Jamal Khashoggi. It should urge UNESCO to collect the full range of data as is required under Sustainable Development Goal 16.10.1. And it should support the secondment of another British expert on media freedom to the Office of the OSCE Representative on freedom of the media.**

- **The FCO should prioritise the implementation of international law and standards on media freedom through its multilateral and bilateral relationships. To this end, the FCO should support research into the underlying structural causes behind attacks on journalists and related impunity, as well as other media freedom challenges. It should also encourage all UK Ambassadors and other diplomats working at the national level to advocate strongly for media freedom in their states. It should use the next Commonwealth Heads of Government Meeting in 2020 as a platform for lobbying other Commonwealth states to comply with international standards on media freedom.**
- **The FCO should encourage other states to act as partners by taking over as state focal points on global media freedom on a rotating basis.**

I. INTRODUCTION

1. My main field of research, policy engagement and teaching is international human rights law, with a particular focus upon freedom of expression and media freedom. I am currently Assistant Professor at the Department of Legal Studies and Visiting Professor at the School of Public Policy at the Central European University (“CEU”), Budapest. I am also a core faculty member of the Center for Media, Data and Society at the same institution.
2. From December 2016 to September 2018, I served as Senior Advisor to the Organization for Security and Co-operation in Europe (“OSCE”) Representative on Freedom of the Media on secondment from the Foreign and Commonwealth Office (“FCO”).¹ Previously, I worked as Senior Legal Officer at ARTICLE 19, the leading international NGO on freedom of expression.
3. This Written Evidence focuses on two of the five issues identified by the Foreign Affairs Committee (“FAC”) in the terms of reference for this inquiry, namely: the reputation and capabilities of the UK in promoting global media freedom; and the best priorities and approaches for the FCO in this field. This Written Evidence has benefitted from a reading of the memorandum submitted to the FAC by the FCO in March 2019 (“FCO memorandum”).²
4. The FAC’s inquiry into the subject “The Foreign and Commonwealth Office and Global Media Freedom” is to be welcomed by advocates of media freedom and freedom of expression more generally. It provides an opportunity for greater transparency and public scrutiny of the FCO’s work on media freedom, and also potentially helps to build the conditions for a more effective and coherent UK foreign policy in this field of human rights.

II. RESPONDING TO THE GLOBAL DETERIORATION IN MEDIA FREEDOM

5. The FCO has identified “global media freedom” as its “priority campaign for 2019” (“FCO campaign”). Its objective is “to shine a spotlight on the issue... and raise the cost to those who violate it”.³ Its vision is to “reduce the intimidation, harassment and persecution of journalists” internationally⁴ and even “reverse the trend of violence against journalists”.⁵ As part of the FCO campaign, a high-level panel of legal experts (“Legal Panel”) will be appointed by the Foreign Secretary and his Special Envoy on Media Freedom, and a “Global Conference on Media Freedom” (“Global Conference”) will be held in the UK on 10 and 11 July to “examine legal and policy initiatives that states can adopt to improve media freedom”.⁶ The importance of media freedom as a UK foreign policy priority has also been recently emphasised through the statements of UK ministers and diplomats at the national level⁷ and at the Human Rights

¹ Written evidence from the FCO (GMF0004) 4.35.

² Ibid.

³ GMF0004, 1.

⁴ Ibid.

⁵ FCO press release, “Jeremy Hunt and Amal Clooney agree joint legal plan to defend media freedom”, 5 April 2019 <https://www.gov.uk/government/news/jeremy-hunt-and-amal-clooney-agree-joint-legal-plan-to-defend-media-freedom>

⁶ “About the Global Conference on Media Freedom” <https://www.gov.uk/government/topical-events/global-conference-for-media-freedom-london-2019/about>.

⁷ FCO press release, “Minister focuses on media freedom and economic progress in Bangladesh”, 9 April 2019 <https://www.gov.uk/government/news/minister-focuses-on-media-freedom-and-economic-progress-in-bangladesh>; Joint statement, “Press freedom in Afghanistan”, 1 May 2019 <https://www.gov.uk/government/speeches/world-press-freedom-day-afghanistan>; Ambassador Daniel Pruce’s speech during Pahayag, “A Forum on Media Freedom and Responsibility”, 3 May 2019 <https://www.gov.uk/government/news/pahayag-a-forum-on-media-freedom-and-responsibility>

Council.⁸ In addition, the new Chevening Africa Media Freedom Fellowship for journalists has been established.⁹

6. **The prioritisation of media freedom by the FCO is justified by the state of media freedom in the world today.** Leading civil society organisations in the field of press freedom have long collected data on the number of killings of and physical attacks on journalists and media workers in particular, albeit with diverging methodologies.¹⁰ The Committee to Protect Journalists' ("CPJ") figures indicate that 88 journalists and media workers were killed and 250 were imprisoned in 2018. CPJ indicates that 1,982 journalists and media workers have been killed since 1992¹¹ and 60 remain missing today.¹² Reporters Without Borders ("RSF") found that 66 journalists, 13 citizen journalists and five media assistants were killed in 2018.¹³ According to the International Press Institute ("IPI") 79 journalists were killed in 2018; 28 in targeted attacks and 11 in armed conflict.¹⁴ Although the total number of journalists killed is not at a record level – according to CPJ, 112 journalists and media workers were killed in 2007 – the fatalities for 2018, as the last full year on record, are alarmingly high. Moreover, the number of journalists murdered as a consequence of their work, as opposed to in combat or crossfire, has markedly increased since 2016.¹⁵
7. In recent years, ARTICLE 19's Express Agenda XPA metric report has produced an annual assessment of the global state of freedom of expression. The most recent report shows that freedom of expression has been in deepening decline over the past ten years around the world.¹⁶ Significantly, the organisation attributes the deterioration, which increased in rate between 2014 and 2017, to assaults on media freedom and especially growing levels of intimidation of journalists, including through verbal and physical attacks. Media freedom has worsened even in countries with strong legal protections of freedom of expression, notably the United States. According to ARTICLE 19, in 2017: 78 journalists were killed; 326 journalists were imprisoned, 194 of those on anti-state charges; 97% of jailed journalists were local reporters; on average, 90% of physical crimes against journalists remained unpunished; and media freedom declined in 48 countries between 2014 and 2017.¹⁷

⁸ UK Statement on media freedom, General debate, Item 3, 24th meeting of the 40th session of the Human Rights Council, 8 March 2019 <https://www.gov.uk/government/news/human-rights-council-40-media-freedom>; Statement by Lord Ahmad of Wimbledon, High-Level Segment, 3rd meeting, 40th session of the Human Rights Council, 25 February 2019 <https://www.gov.uk/government/speeches/uk-closing-statement-by-lord-ahmad-at-the-40th-session-of-the-human-rights-council>

⁹ "Foreign Secretary sets out his vision to improve media freedom around the world", 2 May 2019. <https://www.gov.uk/government/speeches/foreign-secretary-sets-out-his-vision-to-improve-media-freedom-around-the-world>

¹⁰ For information on the Council of Europe region see also Council of Europe, *Democracy at Risk: Threats and Attacks against Media Freedom in Europe: Annual Report by the Partner Organisations to the Council of Europe Platform to Promote the Protection of Journalism and Safety of Journalists* (Strasbourg, 2019) <https://rm.coe.int/annual-report-2018-democracy-in-danger-threats-and-attacks-media-freed/1680926453>

¹¹ <https://cpj.org/data/killed/>

¹² https://cpj.org/data/missing/?status=Missing&start_year=2019&end_year=2019&group_by=location

¹³ <https://rsf.org/en/barometer?year=2018>

¹⁴ <https://ipi.media/programmes/death-watch/>

¹⁵

https://cpj.org/data/killed/?status=Killed&motiveConfirmed%5B%5D=Confirmed&type%5B%5D=Journalist&typeOfDeath%5B%5D=Murder&start_year=1992&end_year=2019&group_by=year

¹⁶ ARTICLE 19, The Expression Agenda Report 2017/2018: the state of freedom of expression around the world, 5 December 2018 <https://www.article19.org/resources/article-19-report-shows-sharp-decline-in-global-freedom-of-expression-since-2014/>

¹⁷ Ibid.

8. **Against such a backdrop, the FCO's commitment to the defence of "global media freedom" through a dedicated campaign in 2019 is commendable.** The term "campaign" suggests that the FCO's foreign policy prioritisation of media freedom is intended to influence others – presumably other governments, but also media organisations, the private sector and the public – to engage in action themselves. The special focus on media freedom is not exclusive to the FCO, however: the Norwegian Ministry of Foreign Affairs launched a "new strategy for freedom of expression and independent media in foreign and development policy" in January 2016, for instance.¹⁸ Nor does it mark a dramatic policy shift for the FCO itself: over recent years, the FCO has supported a range of projects to promote freedom of the media and expression at the national and global levels, and through the UK's bilateral and multilateral relationships.¹⁹

III. THE REPUTATION AND CAPABILITIES OF THE UK

1. *Reputation and compliance with international law*

9. **The UK's "reputation and capabilities" in promoting media freedom globally are inextricably linked to its reputation for promoting media freedom domestically.** As argued by David Petrasek, "in terms of policy, what is 'foreign' is increasingly 'domestic', and vice versa, especially as regards the protection of human rights".²⁰ Furthermore, the reputation of a state is related to its own compliance with international law in the field. The idea of reputation is narrower than the notion of "global standing", which concerns how a state is viewed by domestic and foreign audiences or its "popular image".²¹
10. **The UK's compliance with its international obligations on media freedom – particularly Article 19 of the International Covenant on Civil and Political Rights ("ICCPR"), the global standard on freedom of expression – is preferred as an objective and measurable indicator of the UK's reputation and predictor of the FCO's capacity for impact in promoting media freedom.**²² Ideas of the UK's "long culture"²³ or traditions in support of free speech and press, which are often nostalgic exaggerations of the reality, are inadequate as indicators of the UK's reputation and capabilities in the field.

2. *Scrutiny by international human rights bodies*

11. **In assessing the UK's reputation on media freedom from such an international law compliance-based perspective, the UK's record before international human rights treaty- and UN Charter-based bodies is highly relevant.**
12. The Human Rights Committee, the treaty body supervising the implementation of the ICCPR, is unable to receive communications from individuals claiming violations of Article 19 of the ICCPR by the UK, because the state has not ratified its Optional Protocol. However, at the UK's seventh periodic review in 2015 under the ICCPR, the Committee recommended that the UK

¹⁸ Norwegian Ministry of Foreign Affairs press release, "New Norwegian initiative to promote freedom of expression and independent media", 18 January 2016 https://www.regjeringen.no/en/aktuelt/promote_freedom/id2470543/

¹⁹ FCO press release, "Foreign Secretary announces free speech funding", 2 November 2017 <https://www.gov.uk/government/news/foreign-secretary-announces-free-speech-funding>; GMF0004, 4.5 – 4.35.

²⁰ David Petrasek, "Towards a New Canadian Human Rights Diplomacy" in Roland Paris and Taylor Owen, *The World Won't Wait: Why Canada Needs to Rethink its International Policies* (University of Toronto Press, 2016) 121 – 132, 122.

²¹ Rachel Brewster, "Unpacking the State's Reputation" (50)2 *Harvard International Law Journal* 231 – 269.

²² The UK ratified the ICCPR on 20 May 1976.

²³ GMF0004, 4.1.

“should strengthen its efforts to prevent and eradicate all acts of racism and xenophobia, including in the mass media and on the Internet”. It also reaffirmed the Supreme Court’s view in *R v Gul* (2013) that the definition of terrorism in the Terrorism Act 2000 was “unduly restrictive of political expression”.²⁴

13. At the UK’s third Universal Periodic Review in May 2017, a number of states also made recommendations to the UK concerning the media.²⁵ The UK “supported” the recommendation from Spain to “dedicate more resources to fight against negative stereotypes in the media, against the most affected minority groups...” and Malaysia’s recommendation to “tackle advocacy of religious hatred including that which constitutes incitement to discrimination, hostility or violence in political discourse and in the media”.²⁶ But the UK simply “noted” recommendations from several states (Paraguay, Brazil, Haiti and Liechtenstein) urging it to ensure that its surveillance legislation, particularly the Investigatory Powers Act 2016, does not violate international human rights standards, especially on freedom of expression,²⁷ and a recommendation from the Russian Federation to “stop the pressure on mass media”.²⁸
14. **The most detailed international law-based scrutiny on media freedom terms, however, has come from the special procedures of the UN Human Rights Council, particularly the Special Rapporteur on freedom of opinion and expression.** Although the UK has not yet been subject to a visit by the Special Rapporteur, the mandate holder has issued a number of communications to the UK government concerning issues of media freedom, independently or in conjunction with other UN experts or the OSCE Representative on Freedom of the Media.
 - a. On 17 July 2018, the Special Rapporteurs on freedom of opinion and expression, and counter-terrorism and human rights, expressed concern that provisions of the then Counter-Terrorism and Border Security Bill were “overly broad” and “applicable to a wide range of legitimate activities”, including those of investigative journalists.²⁹ The Special Rapporteur on counter-terrorism and human rights also “expressed concern that public interest speech as well as other legitimate activities, including those undertaken by... journalists... may be deemed as falling within the scope” of the legislation.³⁰ She cautioned that implementation of the legislation risked “setting off an alarming chilling effect on legitimate activities, including that of... journalists... and to unduly interfere with the right to freedom of expression”. The broadly defined offences contained in the legislation fell short of the principles of legality, necessity and proportionality, according to the UN experts.
 - b. On 4 October 2016, the Special Rapporteur on freedom of opinion and expression, together with the OSCE Representative on Freedom of the Media, expressed concern

²⁴ Human Rights Committee, Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland, 17 August 2015, CCPR/C/GBR/CO/7 paras 10 and 14.

²⁵ Report of the Working Group on the Universal Periodic Review of the United Kingdom of Great Britain and Northern Ireland, 14 July 2017, A/HRC/36/9; Report of the Working Group on the Universal Periodic Review of United Kingdom of Great Britain and Northern Ireland, Addendum, 7 September 2017, A/HRC/36/9/Add.1; Annex to the response to the recommendations received on 4 May 2017, 29 August 2017; See also matrice of recommendations <https://www.ohchr.org/EN/HRBodies/UPR/Pages/gbindex.aspx>

²⁶ Recommendations 134.84 and 134.85.

²⁷ Recommendations 134.48, 134.150, 134.151. 134.149.

²⁸ Recommendations 134.86.

²⁹ Communication OL GBR 6/2018, 17 July 2018.

³⁰ Communication OL GBR 7/2018, 17 July 2018.

about proposals to reform BBC governance and about the implementation of the Royal Charter on self-regulation of the press.³¹

- c. On 22 December 2015, the Special Rapporteurs on freedom of opinion and expression, peaceful assembly and association, and human rights defenders expressed concern about the impact of provisions of the draft Investigatory Powers Bill on the protection of journalistic sources. The Special Rapporteurs asked for more information concerning how warrants for journalistic data met the “requirements of international norms and standards”.³² After his follow-up visit to the UK in April 2016, the Special Rapporteur on peaceful assembly and association urged the UK to amend the Investigatory Powers Act 2016 to ensure its compliance with international human rights law.³³
- d. On 14 November 2014, the Special Rapporteurs on freedom of opinion and expression and on torture expressed concern about allegations of the expulsion of journalist Madjaliwa Niyonsaba, given the serious risks that he would face of harassment, arbitrary detention, ill-treatment and torture, and death upon being returned to Rwanda.³⁴
- e. On 2 September 2013, the Special Rapporteurs on freedom of opinion and expression, and counter-terrorism and human rights expressed concerns about the detention of David Miranda, a Brazilian national transiting through Heathrow airport, and the destruction of hard drives at the premises of *The Guardian* by UK state authorities.³⁵

3. NGO rankings

15. **The UK’s international standing on media freedom more generally may be gauged from NGO rankings in the field.** The UK has climbed seven places in RSF’s 2019 World Press Freedom Index to 33rd out of 180 countries, positioned between France and Slovenia – instead of Trinidad and Tobago and Burkina Faso, as in 2018.³⁶ Freedom House’s 2019 Freedom in the World Report, which gives the UK an aggregate score of 93/100, highlights “a vibrant media sector” and that journalists have been able to effectively access information under the Freedom of Information Act 2000.³⁷ Despite the recent upward swing in the rankings, RSF emphasises that the UK remains “one of the worst-performing countries in Western Europe, and a number of worrying trends [have] continued, particularly in relation to national security, surveillance, and data protection”.³⁸ RSF also points out that the UK’s higher ranking is largely the result of the deterioration in press freedom in many other countries.
16. Both RSF and Freedom House highlight similar problems for media freedom within the UK: Section 40 of the Crime and Courts Act, which has still not been repealed; the 2016 Investigatory Powers Act, which does not provide effective protection for journalists and their sources; and the UK’s mass surveillance regime, which was found to violate the protection of journalistic sources by the European Court of Human Rights.³⁹ RSF also raises concerns about the arrest of two

³¹ OSCE Representative on freedom of the media letter 334/16, 4 October 2016.

³² Communication OL GBR 4/2015, 22 December 2015.

³³ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association on his follow-up mission to the United Kingdom of Great Britain and Northern Ireland, 8 June 2017, A/HRC/35/28/Add.1, para 90(e).

³⁴ Communication OL GBR 5/2015, 14 November 2014.

³⁵ Communication OL GBR 4/2013, 2 September 2013.

³⁶ <https://rsf.org/en/news/rsf-index-2019-uk-rises-ranking-press-freedom-climate-remains-worrying>

³⁷ <https://freedomhouse.org/report/freedom-world/2019/united-kingdom>

³⁸ <https://rsf.org/en/news/rsf-index-2019-uk-rises-ranking-press-freedom-climate-remains-worrying>

³⁹ *Big Brother Watch and Others v the United Kingdom*, Applications Nos 58170/13, 62322/14 and 24960/15, judgment

journalists who had their journalistic materials confiscated and remain on police bail in Northern Ireland, as well as the government's continued exploration of means of restricting encryption tools. But it is the issue of the UK's anti-terrorism legislation, particularly the Counter-terrorism and Border Security Act 2019, which remains a dominant threat to media freedom in the UK, especially to the protection of journalistic sources.⁴⁰

17. **The UK's standing on media freedom is also negatively affected by very recent developments.** There are fears amongst civil society organisations that the Online Harms White Paper, published in April 2019, will harm media freedom, given it covers platforms which "allow users to share or discover user-generated content or interact with each other online", whether large or small.⁴¹ Finally, many organisations – including the American Civil Liberties Union, ARTICLE 19, CPJ and Human Rights Watch – have argued that the possible extradition of Wikileaks founder Julian Assange to the United States would "set a dangerous precedent for journalists and whistleblowers exposing human rights abuses by their governments".⁴² Such a decision could therefore serve to tarnish the UK's global standing on media freedom.⁴³

IV. KEY PRIORITIES AND APPROACHES FOR THE FCO

18. According to the FCO, the UK should serve "as an invisible chain linking the world's democracies" for whom "free media is a key part of [their] societies".⁴⁴ But what does that role mean in practical terms? And how can the FCO "shine the spotlight on media freedom across the globe" through its current campaign and beyond?⁴⁵

1. *A strategic framework*

19. **The scope of the FCO campaign on "global media freedom" should be clarified.** At the beginning of May 2019, one third of the way into the campaign, it is striking that its scope, aims, activities and budget remain uncertain. The FCO memorandum is rather general as regards the campaign's objectives and methodologies, including the mini-campaigns, and gives little information on the funding and resources allocated to the campaign.⁴⁶ States where the campaign seeks to "deliver impact" – "countries with an egregious record, those where there is a window of opportunity to make improvements and those at risk of deterioration" – are also unspecified.⁴⁷
20. **To address the lack of a strategic framework for its current campaign, the FCO should produce, as soon as possible, a single comprehensive document detailing in concrete terms**

of 13 September 2018 paras 487 – 500.

⁴⁰ Joint press release of NGOs on the Counter-Terrorism and Border Security Bill 2018, 26 October 2018 <https://www.article19.org/resources/uk-joint-press-release-on-the-counter-terrorism-and-border-security-bill-2018/>. See also Joint Committee on Human Rights, Legislative Scrutiny: Counter-Terrorism and Border Security Bill, HC 1208, HL Paper 167, 10 July 2018, para 26.

⁴¹ ARTICLE 19, "Online harms proposals will impact press freedom", 11 April 2019 <https://www.article19.org/resources/uk-online-harms-proposals-will-impact-press-freedom/>

⁴² ARTICLE 19, "UK: Government must not comply with US extradition request for Julian Assange", 12 April 2018 <https://www.article19.org/resources/uk-government-must-not-comply-with-us-extradition-request-for-julian-assange/>

⁴³ Sejal Parmar, "The Assange case and the UK's global defence of media freedom" *EJIL: Talk!* 15 April 2019 <https://www.ejiltalk.org/the-assange-case-and-the-uks-global-defence-of-media-freedom/>

⁴⁴ "An Invisible Chain", speech by the Foreign Secretary, 31 October 2018 <https://www.gov.uk/government/speeches/an-invisible-chain-speech-by-the-foreign-secretary>; GMF0004, 4.2.

⁴⁵ GMF0004, 5.7.

⁴⁶ GMF0004, 5.2 – 5.11, 5.6.

⁴⁷ GMF0004, 5.6.

all the campaign's elements, objectives, range of activities, budgetary implications and indicators of success. The document should be public and specify the priority countries for the campaign on media freedom, indicating the bases for their selection and whether they are the same as for the FCO's designated human rights priority countries. The strategy document should also set the basis for the FCO's future work on media freedom, after the current campaign has ended.

21. **The FCO should engage closely with civil society actors, including NGOs and academics, to ensure that the campaign on media freedom is both evidence-based and specific goal-orientated.**
22. **The FCO should clearly identify which other specific thematic issues of media freedom beyond the safety of journalists are covered by the campaign.** The indication that the Legal Panel will "[support] the repeal of outdated and draconian laws" suggests the campaign encompasses a drive to abolish criminal defamation and blasphemy laws.⁴⁸ But questions remain about the range of media freedom issues to be covered by the campaign in its entirety: does the campaign cover threats to media freedom emanating from the use of counter-terrorism and extremism laws, state surveillance of journalists and their sources, internet shut-downs and blocking of online media, and emerging laws against disinformation, which serve to silence dissenting voices in the media?⁴⁹ Does it address threats to media independence, diversity and financial sustainability? Does it tackle the denigration of individual journalists and media organisations by political leaders? It is submitted that all these questions should be answered in the affirmative. **The FCO campaign and the FCO's work on media freedom in subsequent years should be as comprehensive as possible in addressing the broad range of challenges.**
23. **The FCO should also clarify that its campaign embraces a broad conception of "media freedom" encompassing the freedom of expression of media as those contributing to public discourse – whether online or offline, whether as employed or freelance journalists, editors, publishers or owners of outlets, or bloggers.** As Internet intermediaries rather than content producers, social media platforms, such as Facebook, have not hitherto had the same journalistic privileges or ethical responsibilities expected of traditional or so-called legacy media outlets. Yet there are good reasons why the role of social media platforms should be encompassed by the FCO's work on media freedom too: they act as functional gatekeepers and editors of online content, including news content; they face restrictions around the world which inhibit the dissemination of public interest journalism and the free flow of information in societies;⁵⁰ and emerging proposals for regulatory approaches, particularly independent social media councils, are modelled on existing self-regulatory mechanisms for the press.⁵¹

⁴⁸ FCO press release, "Jeremy Hunt and Amal Clooney agree joint legal plan to defend media freedom", 5 April 2019 <https://www.gov.uk/government/news/jeremy-hunt-and-amal-clooney-agree-joint-legal-plan-to-defend-media-freedom>

⁴⁹ OHCHR press release, statement by the Special Rapporteur on Freedom of Opinion and Expression, David Kaye on the occasion of World Press Day, 3 May 2019 <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24556&LangID=E>

⁵⁰ See Freedom House, *Freedom on the Net 2018: The Rise of Digital Authoritarianism* <https://freedomhouse.org/report/freedom-net/freedom-net-2018/rise-digital-authoritarianism>

⁵¹ ARTICLE 19, *Self-regulation and 'Hate Speech' on Social Media Platforms* (London, 2018) https://www.article19.org/wp-content/uploads/2018/03/Self-regulation-and-%E2%80%98hate-speech%E2%80%99-on-social-media-platforms_March2018.pdf pp 20 – 22.

2. Policy coherence for media freedom

24. **The invigorated and enhanced level of attention upon media freedom through the FCO's campaign provides a valuable opportunity for the UK government to take stock of the UK's foreign and domestic policies on media freedom terms, in a critical way and with a sense of humility.** Unless such a stock-taking takes place, there will be a risk that the championing of media freedom as a foreign policy priority in 2019, with its underlying expectation that other states will review their legislation and policies in the area, will be perceived as little more than a public relations exercise. Worse still, it could be viewed as an indication of the UK's double standards or even the kind of "Western" or "colonial imposition" which the Foreign Secretary overtly rejected in his speech at the UNESCO World Press Freedom Day celebrations in Addis Ababa on 3 May.⁵²
25. **The FCO campaign offers the UK government the chance to align existing policy approaches and positions to the goal of media freedom. The legitimacy and effectiveness of the current campaign, as well as its presumed follow-up in subsequent years, depends on the UK's own credibility on the protection of media freedom. This itself hinges on the coherence and consistency within and across the UK's foreign and domestic policies. A "policy coherence for media freedom" approach within and across government departments – including the FCO, but also others such as the Home Office, the Department for Digital, Culture, Media and Sport, the Department for International Trade, and the Ministry of Justice – is therefore advocated.⁵³ Such an approach should go beyond ensuring systematic policy consistency, however, and also require positive and measurable impacts upon media freedom, as well as compliance with the UK's international legal obligations, as previously argued.**
26. Policy coherence-related conflicts obviously exist between the FCO's commitment to media freedom and other UK policies.⁵⁴ Clearly, the UK's continued sale of arms to Saudi Arabia stands in striking contrast to the Foreign Secretary's condemnation of the murder of journalist Jamal Khashoggi "in the strongest possible terms" and statement that it was "fundamentally incompatible with our values and we will act accordingly" in Parliament.⁵⁵ The absence of Turkey, the "world's biggest jailor of professional journalists",⁵⁶ as a designated FCO priority country also contradicts this statement and the aims of the campaign, and ought to be addressed, as the FAC has previously recommended.⁵⁷ Although the Foreign Secretary has recently condemned the detention of journalists in China,⁵⁸ there is a risk that the FCO's media freedom priority and other human rights objectives are subordinated to the UK's economic interests.⁵⁹
- How the FCO resolves such policy coherence-related tensions between its media freedom**

⁵² GMF0004, 5.1; "Foreign Secretary sets out his vision to improve media freedom around the world" 2 May 2019 <https://www.gov.uk/government/speeches/foreign-secretary-sets-out-his-vision-to-improve-media-freedom-around-the-world>

⁵³ This borrows from the approach of "policy coherence for development". See 2019 EU Report on Policy Coherence for Development https://ec.europa.eu/europeaid/policies/policy-coherence-development_en

⁵⁴ See <https://globalnaps.org/issue/policy-coherence/> on the OECD's definition of policy coherence.

⁵⁵ The Secretary of State for Foreign and Commonwealth Affairs (Mr Jeremy Hunt), House of Commons Hansard, 22 October 2018, Vol 648, Cols 79-80.

⁵⁶ <https://rsf.org/en/turkey>

⁵⁷ House of Commons Foreign Affairs Committee, *Global Britain: Human rights and the rule of law*, Thirteenth Report of Session 2017-19, HC 874, 5 September 2018, para 38.

⁵⁸ "Statement from the Foreign Secretary, Jeremy Hunt, in response to a report by the Foreign Correspondents' Club of China on media freedom", 29 January 2019.

⁵⁹ House of Commons Foreign Affairs Committee, *China and the Rules-Based International System*, Sixteenth Report of Session 2017-19, HC 612, 4 April 2019, Conclusions and recommendations, para 32.

priority and other interests will be a test of the depth and robustness of the UK government's commitment to the former.

27. In its memorandum, the FCO indicates that the UK would “[apply] appropriate legal means to hold people to account, including, if possible, sanctions where relevant”.⁶⁰ This appears to be a reference to the Sanctions and Anti-Money Laundering Act 2018, which allows targeted sanctions against foreign officials implicated in gross human rights abuses. **The UK government should implement this “Magnitsky legislation” to provide individual “accountability for or be a deterrent to gross violations of human rights”, especially media freedom, and to “promote compliance with international human rights law” in the area.**⁶¹ The FCO campaign, specifically the Legal Panel, should identify individuals who could be subjected to targeted sanctions under the legislation.

3. *International human rights law as the normative foundation*

28. The framing of the FCO campaign on “global media freedom” alludes as much to the idea of “Global Britain” advanced by the UK government in the aftermath of the EU referendum in June 2016, as it points to the campaign’s worldwide scope.⁶² The FCO’s focus on media freedom may add substance to the slogan of “Global Britain”, and in so doing address some of the criticisms and questions raised by the FAC in 2018.⁶³ The FCO campaign also appears intended to complement the FCO’s work on strengthening the so-called “rules-based international system” (“RBIS”). UK ministers, diplomats and others regularly presume a common understanding of the term as one that encompasses, at minimum, international treaty law. Yet the vagueness and manipulability of the concept means that it could be used by governments to avoid their international legal obligations, subvert international human rights mechanisms of accountability, and thereby dilute the international rule of law.⁶⁴ **The FCO should therefore commit to strengthening the “international law-based system” on human rights in general and on media freedom in particular.**
29. The FCO memorandum fails to specifically reference any of the UK’s binding international human rights treaty obligations and other commitments on freedom of expression. Instead, there is a general reference to the “core human rights treaties”.⁶⁵ The FCO also asserts that “[e]xisting human rights frameworks and instruments such as the UN Convention on Journalist Protection worldwide provide, in theory, for sufficient protection for all”.⁶⁶ **The suggestion that there is such a treaty already in existence is wrong. The FCO should revise its assumption that such a “UN Convention on Journalist Protection” exists.** There is only a draft “UN Convention on the safety and independence of journalists and other media professionals”, proposed in 2017 as part of the International Federation of Journalists’ (“IFJ”) ongoing campaign against impunity.⁶⁷ The FCO should also appreciate that the initiative has not gathered broad support from human

⁶⁰ GMF0004, 5.5.

⁶¹ Sanctions and Anti-Money Laundering Act 2018, Section 1(2)(f).

⁶² See, for instance, Oliver Daddow, “GlobalBritain™: the discursive construction of Britain’s post-Brexit world role”, 5(9) *Global Affairs* 5 – 22.

⁶³ House of Commons Foreign Affairs Committee, *Global Britain*, Sixth Report of Session 2017-19, published 12 March 2018, HC 780.

⁶⁴ For a critique of the concept of the “rules-based international system”, see Shirley Scott, “In Defense of the International Law-Based Order”, Analysis, Australian Outlook, Australian Institute of International Affairs, 7 June 2018 <https://www.internationalaffairs.org.au/australianoutlook/in-defense-of-the-international-law-based-order/>

⁶⁵ GMF0004, 4.20.

⁶⁶ GMF0004, 4.22.

⁶⁷ https://www.ifj.org/fileadmin/user_upload/Draft_Convention_Journalists_E.pdf

rights organisations, including in the field of freedom of expression, or states themselves. This is understandable since the actual existing body of international human rights law provides a more than adequate normative framework for the promotion of the safety of journalists internationally, and the dedication of energy and resources towards a new treaty is unnecessary.

30. **The FCO should explicitly and firmly situate its campaign on global media freedom within the normative framework of international human rights law on freedom of expression, particularly Article 19 of the Universal Declaration of Human Rights (“UDHR”) and Article 19 of the ICCPR. This essential normative framework also includes various relevant “soft law” or non-binding instruments – including General Comment No. 34 of the Human Rights Committee,⁶⁸ the detailed recommendations of the Special Rapporteur on freedom of opinion and expression,⁶⁹ and resolutions of the Human Rights Council⁷⁰ and General Assembly⁷¹ – as well as the binding resolutions of the Security Council on the subject.⁷²** At the regional level, the normative framework includes Article 10 of the European Convention on Human Rights (“ECHR”) on freedom of expression, and Article 11 of the EU Charter of Fundamental Rights, the only provision in the human rights catalogue expressly protecting “freedom and pluralism of the media”, which remains relevant until at least the UK’s departure from the EU. As an OSCE participating State, the UK also has commitments in the field of freedom of the media.⁷³
31. **As the most recent and detailed UN text on the issue of safety of journalists to date, Human Rights Council resolution 39/6, adopted on 27 September 2018, should be at the heart of the FCO campaign on media freedom.** The text recognises a broad range of physical and online threats faced by journalists, including the denigration or intimidation of journalists by political leaders “which increases the risk of threats and violence... and undermines public trust in the credibility of journalism”, and urges a comprehensive and preventive approach in response.⁷⁴ The fact that the text was adopted on the basis of consensus at the Human Rights Council, inclusive of such states as Saudi Arabia and China, means that it can and should provide a strong basis for the FCO’s advocacy of media freedom before a range of states.

4. *Strengthening existing international institutions*

32. The FCO memorandum indicates that it is unclear whether the position of a Special Representative to the UN Secretary-General (“SRSG”) for the safety of journalists, proposed by RSF,⁷⁵ is “desirable or necessary”.⁷⁶ Although the proposal has gathered growing support amongst civil society organisations,⁷⁷ some significant players, notably ARTICLE 19, have so far exercised caution and withheld their backing. This may be because questions exist concerning

⁶⁸ Human Rights Committee, General Comment No 34, CCPR/C/GC/34, 11 September 2011.

⁶⁹ <https://www.ohchr.org/EN/Issues/FreedomOpinion/Pages/OpinionIndex.aspx>

⁷⁰ See in particular the following Human Rights Council resolutions: 39/6 of 27 September 2018, A/HRC/RES/3/6; 33/2 of 29 September 2016, A/HRC/RES/33/2; 27/5 of 25 September 2014, A/HRC/RES/27/5; 21/12 of 27 September 2012, A/HRC/RES/21/12; 13/24 of 26 March 2010, A/HRC/RES/13/24.

⁷¹ General Assembly resolutions 72/175 of 19 December 2017, A/RES/72/175; 70/162 of 17 December 2015, A/RES/70/162; 68/163 of 18 December 2013, A/RES/68/163; 69/185 of 18 December 2014, A/RES/69/185.

⁷² Security Council resolutions 1738 of 23 December 2006, S/RES/1738 (2006), and 2222 of 27 May 2015, S/RES/2222.

⁷³ OSCE, *OSCE commitments: Freedom of the Media, Freedom of Expression, Free Flow of Information, 1975-2017* (Vienna: 2017) 4th edition; OSCE Decision 3/18 on the safety of journalists, 7 December 2018, MC.DEC/3/18.

⁷⁴ Human Rights Council resolution 39/6 of 27 September 2018, preamble and para 8.

⁷⁵ <https://rsf.org/en/international-coalition-favor-special-representative-safety-journalists>

⁷⁶ GMF0004, 4.22.

⁷⁷ <https://rsf.org/en/endorsements>

the role; its competences, its relationship with existing UN bodies (such as the Special Rapporteur on freedom of opinion and expression), its range of activities (especially those of UNESCO under the UN Plan of Action on the Safety of Journalists and the Issue of Impunity), and its funding. **Drawing on the expertise of leading organisations, the FCO should consider more carefully the arguments for and against the proposal for an SRSG for the safety of journalists and come to a position as to whether it supports the proposal.**

33. **Through its multilateral engagement, the FCO should bolster the efforts of established international mechanisms on media freedom issues.** While it is positive that the UK intends to be a member of the Group of Friends (“GoF”) on the Safety of Journalists in New York, and was a founder member of the similar GoF at the OSCE,⁷⁸ the FCO campaign offers a further opportunity for the UK to exert pressure on existing UN bodies to take specific action to promote media freedom.

34. There are two particular actions which the UK should promote immediately.

- a. **First, the UK should urge UN Secretary-General António Guterres to convene a high-level international investigation into the murder of Jamal Khashoggi,** notwithstanding the inquiry led by the Special Rapporteur on extrajudicial, summary or arbitrary killings.⁷⁹
- b. **Second, the UK should urge UNESCO to collect the full range of data as is required under Sustainable Development Goal 16.10.1. More specifically, UNESCO should not only collect information in relation to the “number of verified cases of killing” of journalists, as it is currently doing, but also in relation to the “kidnapping, enforced disappearance, arbitrary detention and torture of journalists and associated media personnel ... in the previous 12 months”, which it is not at present.**

35. **The FCO should clarify what it means by its stated intention to “boost existing mechanisms such as the effective tools developed by the Council of Europe and OSCE, replicating them in regions such as the Americas and Africa”.**⁸⁰ The FCO may have in mind the Council of Europe’s Platform for the Protection of Journalism and the Safety of Journalists as it is a unique collaboration between a regional organisation and civil society organisations.⁸¹ But the FCO should recognise that there are long-established intergovernmental mechanisms in the Americas and Africa already in existence – namely the Organisation of American States’ Special Rapporteur on Freedom of Expression, and the African Commission on Human and Peoples’ Rights Special Rapporteur on Freedom of Expression and Access to Information.⁸² The experts appointed to these roles frequently collaborate with their UN and OSCE counterparts, including through the Joint Declarations on freedom of expression, a significant body of “soft law” global standards on media freedom issues.⁸³

⁷⁸ GMF0004, 4.26, 4.33.

⁷⁹ “Preliminary observations of the human rights inquiry into the killing of Mr. Khashoggi following the country visit to Turkey” 7 February 2019 <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24143&LangID=E>; Steven Ratner, “Time for the U.N. secretary general to open his own Khashoggi investigation” The Washington Post, 14 January 2019 https://www.washingtonpost.com/opinions/2019/01/14/time-un-secretary-general-open-his-own-khashoggi-investigation/?utm_term=.5c6e8981abef

⁸⁰ GMF0004, 5.3.

⁸¹ <https://www.coe.int/en/web/media-freedom/the-platform>

⁸² <http://www.oas.org/en/iachr/expression/index.asp> and <http://www.achpr.org/mechanisms/freedom-of-expression/>

⁸³ See the Joint Declarations on freedom of expression <https://www.osce.org/fom/66176>

36. **In addition, the FCO should support the secondment of another British expert on media freedom to the Office of the OSCE Representative on freedom of the media.**⁸⁴ In order to attract high quality candidates, however, the UK should offer a secure, long-term contract, instead of one-year renewable contracts as previously.

5. *Addressing the “implementation gap”*

37. **The FCO should prioritise the implementation of international law and standards on media freedom through its multilateral and bilateral engagements and relationships.** The so-called “implementation gap” between adopted international legal standards, on the one hand, and their application through concrete action at the national level, on the other, is the most pressing challenge in the field.⁸⁵

38. **To address the “implementation gap” and as part of its current campaign, the FCO should undertake the following activities.**

- a. **The FCO campaign should support research into the underlying structural causes behind attacks on journalists and related impunity, as well as other media freedom challenges.** There is a need for interdisciplinary work – involving a range of experts including political and social scientists, behavioural theorists, economists and technology experts, as well as advocacy organisations in the field – to investigate the causes of challenges to media freedom and to come up with innovative solutions and responses. Legal initiatives by themselves, including the proposal of legal reforms by the Legal Panel, will not be sufficient to address deep-rooted challenges to media freedom and to incentivise compliance with international standards.
- b. **The FCO should encourage all UK Ambassadors and other diplomats working at the national level to advocate strongly for media freedom in their states, irrespective of whether or not they are based in a FCO designated priority country.** UK representatives should engage with functionally distinct state actors (such as legislators, national human rights institutions, judges and municipal actors), civil society organisations, media outlets and journalists, as well as the private sector, on initiatives to promote the understanding and implementation of international standards at the national level.
- c. **The FCO should use the next Commonwealth Heads of Government Meeting in 2020, to be held in Rwanda, a country with a poor media freedom record,**⁸⁶ **as a platform for lobbying other Commonwealth states to comply with international standards on media freedom.** More generally, the FCO should urge “Commonwealth states to repeal ‘outdated and draconian laws’, which have their roots in colonial provisions and for which therefore the UK bears a certain historic responsibility”.⁸⁷ Legal provisions on “criminal defamation, blasphemy and sedition, for instance, still exist in

⁸⁴ GMF0004, 4.35.

⁸⁵ ARTICLE 19, *The Expression Agenda Report 2017/2018: the state of freedom of expression around the world*, 5 December 2018 p 16 <https://www.article19.org/resources/article-19-report-shows-sharp-decline-in-global-freedom-of-expression-since-2014/>

⁸⁶ <https://rsf.org/en/rwanda>

⁸⁷ Sejal Parmar, “The Assange case and the UK’s global defence of media freedom” *EJIL: Talk!* 15 April 2019 <https://www.ejiltalk.org/the-assange-case-and-the-uks-global-defence-of-media-freedom/>

many Commonwealth member states, including India, Pakistan, Bangladesh and Malaysia, and are calling out for abolition.”⁸⁸

6. Sustainability

39. The sustainability of the FCO campaign in promoting media freedom relies on the UK’s positive collaboration with like-minded states and its demonstrable persuasion of many others. **Though the Canadian government is set to take over a leadership role on media freedom in 2020, the FCO should lobby other states – such as other members of the Group of Friends on the safety of journalists at the UN – to act as partners by taking over as state focal points on global media freedom on a rotating basis in future years.**

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⁸⁸ Ibid.