Written evidence from Scottish PEN and PEN International (GMF0030)

The state of press freedom across the globe has been steadily deteriorating, with a number of complex and evolving threats undermining press freedom in a wide range of countries. The 2019 World Press Freedom Index, compiled by Reporters Without Borders, demonstrates “how hatred of journalists has degenerated into violence, contributing to an increase in fear. The number of countries regarded as safe, where journalists can work in complete security, continues to decline, while authoritarian regimes continue to tighten their grip on the media.” The index goes further, suggesting that “only 24 percent of the 180 countries and territories are classified as ‘good’ or ‘fairly good’”. This decay is evidenced across the globe and represents a distinct threat to journalists and media workers everywhere.

The threats journalists face are multiple and complex, stemming from both state and non-state actors utilising both legal and extra-legal measures to silence journalistic output or target the journalists themselves. Exploring Scottish PEN and PEN International’s work over the recent years, here is a non-exhaustive outline of key threats to global freedom that need to be addressed.

Extrajudicial Threats to Press Freedom and Impunity

Journalists across the globe are vital to inform the public, challenge entrenched power and report on all processes undertaken by public bodies, private entities and individuals in a manner that strengthens civic discourse and scrutiny. In 2018, according to Reporters Without Borders, 66 journalists had been killed worldwide, while in 2019, 174 journalists, 150 citizen journalists and 17 media assistants have been imprisoned during the course of their duties. Alternate analysis has found a consistent trend of journalists being killed for carrying out their duties. According to the Committee to Protect Journalists, since 1992, 1340 journalists have been killed (where the motive could be confirmed, the number rises to 1868 when we include cases where there is an unconfirmed motive). These killings are spread across the globe but mainly centre on conflict zones, countries with inadequate legal and political systems, and areas where corruption and opaque systems thrive. Threats of violence or other extrajudicial means of censorship cut across a number of existing threats to press freedom, including sharing disinformation, hate speech, rules governing civic morals, societal cohesion and offence and a range of other issues. Further to this, it is important to state that the risks to journalists are multiplied when the journalist is part of a marginalised group or community. Female journalists, journalists who are transgender or part of the broader LGBTQI community or those originating from persecuted minorities, such as Rohingya Muslims, Kurds, those in exile, seeking asylum or refuge are all under greater threats that the FCO needs to respond to. Expanding the FCO’s capacity and willingness to undertake a holistic and intersectional approach to threats to press freedom will ensure that the specificities of these unique cases are explored and countered effectively. The FCO needs to be able to directly engage with foreign partners to demand that journalists are protected and that each country stands up to the commitments they have made to press freedom and free expression. Ensuring every country will be expected to respond to demands for clarification and condemnation, while also being required to improve political, legal and social systems are in place to protect journalists is the baseline we should expect of the FCO when representing the UK across the globe.

In recent years we have seen a number of murders of journalists within the European Union, including Daphne Caruana Galizia (Malta), Ján Kuciak (Slovakia), Viktoria Marinova (Bulgaria), Kim Wall (Denmark) and Lyra McKee (United Kingdom). Four out of the five...
were connected to the journalists carrying out their work and two out of these five killings arose from the journalists covering cases of corruption within their respective countries. The connection between threats against journalists and corruption represents a key aspect that needs to be addressed by national governments, supranational organisations such as the European Union and foreign governments, such as the UK through the FCO. Further evidence of this issue can also be seen outside Europe, such as the case of Mexico where, according to the CPI, 48 journalists have been killed since 1992, many due to their coverage of the illicit connection between the state, police forces, the army and drug cartels. Definitive and unequivocal action to tackle corruption and abuses of power will support the work of journalists, while also strengthening legal and political systems, within which these issues should be addressed. Threats to journalism in this regard are a symptom of a larger and more complex issue and when we are able to strengthen our capacity to effectively address the root cause, the symptoms can be significantly mitigated. There are a number of ways the FCO can protect journalists and support movement on this matter including backing movements to ensure financial transparency, in terms of tax revenue, ownership and the transfer of funds, both within and without national jurisdictions, supporting movements to improve political transparency and due process and call for independent legal and political processes.

A further threat to journalists is the inability of legal systems to bring attackers to justice. Impunity has paralysed legal and judicial processes, illustrating to certain actors that journalists can be killed or attacked without any adverse results. According to UNESCO, on average, every five days a journalist is killed for bringing information to the public and “in nine out of ten cases the killers go unpunished.” Protections for press freedom are only as good as the legal and political systems that underpin them. A recent example of this is the Maltese government’s response to the murder of Daphne Caruana Galizia. Since her murder in 2017, the government has resisted calls from her family, international organisations including Scottish PEN, PEN International, ARTICLE 19 and the International Federation of Journalists, as well as the European Parliament and individual parliamentarians to bring forward a public inquiry and adequately investigate both her murder and the underlying issues of corruption her work exposed. While our ability to influence European policy on issues such as this may change following our proposed exit from the European Union, there are a number of other avenues the UK can explore to counter impunity, including through the United Nations and bilateral agreements with individual nations. Ensuring legal systems function to protect everyone within the jurisdiction, including journalists who fulfil a significant service to strengthening democratic principles, should be a baseline and fundamental concern to the UK when forging and strengthening international partnerships. This should be paired with a willingness of the UK to hold partners to account when failings result in the killing or imprisonment of journalists and the reduction of space within which the media can operate.

Legal Threats to Press Freedom
Beyond extrajudicial threats to press freedom as outlined above, a number of states around the world use and abuse legal processes to threaten journalists and further weaken press freedom. In a number of jurisdictions, a wide range of laws depend on flawed definitions of legal terms to stifle press freedom. This includes the use of hate speech to target journalists, as seen in countries such as Turkey, Russia and India, as well as privacy and data protection laws, and the conflating of journalism with ideas of terrorism and national security. This informs how states offer protections to journalists and approach connected issues such as freedom of information legislation, whistle-blower protections and the regulation of media outlets. Further to these examples, defamation (both criminal and civil) that do not adequately
balance the importance of free expression with the right to a reputation (as outlined in the right to a private and family life) is commonly seen around the world as a mechanism to intimidate journalists and use the threats of costly legal processes to slow down or censor all critical media coverage. For example, at the time of her murder, Daphne Caruana Galizia was facing over 40 separate defamation actions – many of which remain, following her death, to be answered by her estate. The FCO can play an important role to share best legal practice as to how defamation law should be deployed in jurisdictions around the world, use supranational and regional mechanisms to call for reform, support the training of journalists and parliamentarians and encourage an open and transparent process of reform. Further to this, London is the unofficial heart of the reputation management industry used by claimants around the world. The FCO should work closely with other UK government departments to ensure this industry is fully regulated and out of reach of foreign jurisdictions to use both UK companies, and at times the UK legal jurisdiction, to silence journalists and stifle press freedom.

Beyond the misinterpretation of legal terms, a number of states undermine legal processes to limit press freedom. A recent and stark example of this is in Turkey following the attempted coup of July 2016. The state’s reaction to this was to clampdown on civil society, focusing on the legal, education, judicial and journalistic professions, resulting in the dismissal of over 120,000 public sector workers including state officials, teachers, bureaucrats, and academics, more than 4,000 judges and prosecutors permanently dismissed, 149 media outlets shut down and 140 journalists imprisoned. This has resulted in a modification of the Turkish legal system to deploy mass court cases (sometimes without lawyers present for the defence), amounting to what has been alleged to be an example of collective punishment, based on tenuous charges such as membership to terrorist organisations, or charging lawyers with crimes committed by their clients. The collapse of the judiciary had led to journalists and others suffering serious human rights violations, including their right to freedom of expression, their right to liberty and security and their right to a fair trial. This exerts a significant censorious effect on the work of journalists and the broader media environment by intimidating civil society and silencing dissenting voices in the country. A number of independent organisations have observed the court cases and the European Parliament has worked to demand reform, but the FCO should take a more proactive stance to the abuses of legal procedures across the globe that specifically targets journalists and civil society more broadly.

**Protecting At-Risk Journalists**

Many journalists around the world are at risk of violence, incarceration and a range of legal and extrajudicial threats based on their journalism as outlined above. Short of ensuring these systems can be modified to better protect journalists, the FCO should take a more proactive approach to protect at-risk journalists. This can be done in a number of ways, such as supporting more robust whistle-blower protections, as well as ensuring journalists are able to seek and secure refuge, potentially in the UK or other countries outwith the journalist’s home country. This can manifest through support, including explicit financial support, of organisations and networks such as the International City of Refuge Network (ICORN) and organisations who offer psychological, psycho-social and other medical support to those at risk, as well as working closely with the Home Office to ensure the UK can offer threatened journalists a safe refuge. If there are locations or organisations available and accessible to at-risk journalists with sufficient capacity, expertise and funding to meet the demand, it would represent a significant support to at-risk writers, knowing that there is always somewhere available to them if threats manifest. This support should also encapsulate the ability to
access connected support including employment or representational issues, healthcare (including mental health support), as well as protection for family members.

Digital Surveillance and Journalism

New technologies have revolutionised how journalism is both created and consumed. However, this transformation has also established a new set of threats that journalists and media workers have to navigate through to ensure they can carry out their jobs safely and effectively. There is growing scholarship as to the risks of digital surveillance on free expression, with evidence suggesting that state surveillance, as revealed by NSA whistleblower Ed Snowden, undermines people’s willingness to research sensitive topics on Wikipedia (Jon Penney of the Oxford Internet Institute and Citizen Lab discovered a 20% decrease in Wikipedia traffic to sensitive topics following the Snowden leaks), take part in online debate on Facebook (Elizabeth Stoycheff found that the perception of surveillance encouraged holders of minority views to self-censor when confronted with more commonly held thoughts) and sensitive topics being avoided in Google searches in 41 countries around the world (Alex Mathews and Catherine Tucker found that search terms that were deemed both personally-sensitive and government-sensitive were most negatively affected by the Snowden revelations). Further to this, PEN America found that 1 in 6 writers (including journalists) avoided speaking or writing on topics they thought would subject them to surveillance. A follow up study Scottish PEN carried out with the University of Strathclyde found similar results for writers based in Scotland, where 1 in 5 avoided these same topics due to both the Snowden revelations and the passage of the Investigatory Powers Act.

Journalism is especially sensitive to surveillance as it could threaten their relationships with sources, undermine any protections they may offer and dissuade journalistic exploration of challenging but necessary issues, such as national security. This sensitivity was highlighted in the Accra Declaration, drafted by UNESCO on World Press Freedom Day 2018, which called on governments to “recognise in law the right of journalists to protect the secrecy of their confidential sources of information and ensure that such protection extends to cover digital surveillance and other ways in which sources might be exposed.” These issues were also raised during the passage of the Investigatory Powers Bill by organisations such as Scottish PEN, PEN International, the National Union of Journalists, Reporters Without Borders and a range of other experts, but the final act that came into force fails to adequately protect journalists and journalism as a whole. The passage of the bill has an impact beyond the UK. A Chinese state spokesperson in 2017 identified the Investigatory Powers Act as a template China explored when looking to reform their domestic laws, while Russia, through reform (colloquially called Yarovaya Law), also mirrored many of the powers outlined in the UK reform. This duplication of the law in other jurisdictions represents a distinct threat to journalism as many of these countries (including both China and Russia) have legal systems and norms that do not conform to international standards related to free expression and press freedom.

Further to surveillance powers as outlined above, there is a growing appetite within Five-eyes countries to restrict or undermine encrypted communication platforms and technologies. While forming a substantial part of the digital foundations that make modern technology possible, journalists rely on end-to-end encrypted communication tools, such as WhatsApp or Signal, to correspond with their colleagues and sources. The Accra Declaration outlines the importance of encryption and the responsibility of states to ensure the technology is accessible to all journalists, stating in point 34, that states should “refrain from prohibiting or criminalising the use of encryption and anonymity tools”. Further to this, David Kaye, the
UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, in a 2015 report exploring encryption and anonymity stated: “encryption and anonymity, and the security concepts behind them, provide the privacy and security necessary for the exercise of the right to freedom of opinion and expression in the digital age.” With the passage of the Investigatory Powers Act in the UK, the Assistance and Access bill in Australia, which outlines a process (similar to technical capability notices in the Investigatory Powers Act) by which the state can empower service providers to develop the capabilities to intercept communications data or ‘backdoor’ devices, and euphemisms, such as “responsible encryption” deployed by the US and other countries, undermines and weakens the tools necessary for journalists to carry out their work.

Beyond state deployed surveillance powers as outlined above, there is a growing private industry that provides regimes including Bahrain, Syria, Egypt, Mexico and Saudi Arabia, the capabilities to use powerful surveillance powers, such as data interception and collection, undermining encryption and equipment interference, without the necessary legal and judicial oversight. The revenues of this industry were “nearly zero” in 2001 but have since increased to about “$5 billion [per] year” by 2011. The UK has significantly more surveillance technology companies registered in its borders than anywhere in the world outside the US. According to Privacy International, the UK has 104 surveillance companies producing technology for export – to foreign governments and corporations – headquartered in the country. That number is more than double the number of companies of the next European country, France, which has 45 companies headquartered in country. The recent case of a vulnerability being found and exploited by Israeli firm, NSO Group in WhatsApp, used by 1.5 billion people around the world, demonstrates the threats of these firms to journalists, media workers and everyone else in the media eco-system. NSO Group’s primary software for sale, Pegasus has been found active in around 45 countries according to Citizen Lab. The software was also discovered on the electronic devices of colleagues of Javier Valdez, a Mexican journalist murdered in 2017 and has also allegedly been used by the Saudi authorities to plan and implement their murder of Jamel Khashoggi in Turkey. As the European Parliament has moved to tighten up export licenses related to surveillance technology, the UK, alongside Poland, Finland, Ireland, Italy, Sweden sought to weaken the Parliament’s commitment. To better protect global press freedom the UK needs to unequivocally support greater oversight and regulation of the trade and sale of these powerful tools that have been used around the world to target journalists, alongside opposition groups, marginalised communities, activists and other members of civil society.

With the expansion of digital surveillance, there is an increased responsibility for journalists and media workers to have a greater understanding of the surveillance capabilities and laws that govern them that are relevant to the jurisdiction they are working in, as well as the practical steps they can take to both protect themselves, their colleagues, readers and sources. Privacy-Enhancing Technologies (PETs) are tools that all journalists should be aware of and greater training and capacity building should be on offer to ensure that all journalists can continue to work free from the threats of pervasive surveillance.

Local Media, Media Ownership & Trustworthiness
A healthy media landscape and environment is vital for a functional and pluralist democracy and an important aspect of that is local media outlets, including newspaper, magazines, radio and television, alongside online publications, bloggers and social media users. However, as the media landscape, ownership and readership have changed, so has the security and future of local media outlets. According to research carried out by the Press Gazette, from 2005 to
the end of 2018 there has been a net loss of 245 UK local news titles. Further to this, research carried out for Ofcom by Mediatique found that the “number of employees working full-time as front-line journalists [in the UK] has fallen to around 17,000 today [in 2018], compared to 19,000 in 2011 and around 23,000 in 2007.” This is not confined to the UK alone. A study carried out by the Public Policy Forum found that “one third of Canadian jobs in journalism had disappeared since 2010” and according to research carried out by the University of North Carolina’s Center for Innovation and Sustainability in Local Media, “more than one in five papers has closed over the past decade and a half…half of the 3,143 counties in the country [USA] now have only one newspaper…almost 200 counties in the country have no newspaper at all.” Without media outlets that engage with local issues and communities, we risk readers disengaging both with media outlets and local democratic processes and other important issues. This would severely undermine the right to free expression, which contains the commitment to the right to accessing information. Article 10 of the European Convention on Human Rights outlines this, stating: “This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers” [emphasis mine]. The commitment to global press freedom needs to both protect those who generate journalism, most notably journalists, photographers and media workers, but also needs to ensure that audiences and publications are themselves incorporated into any response by the FCO into ensuring that the right to free expression and accessing information is adequately protected.

Beyond the decay of local media representation is the issue of homogenised media ownership that stifles the creation and sharing of minority or marginalised viewpoints and presents a skewed speech landscape that presents consensus at the expense of silenced dissenting opinions or voices. This can manifest through a private monopoly, as seen in countries such as Australia, Chile and Ireland where one company has more than 50% of the market share for newspaper ownership, with TV and radio media similarly consolidated within a small number of media companies, and state media monopolies as seen in countries such as China, Eritrea and Egypt. This directly affects media plurality and the ability of readers and the wider community to source a diversity of different opinions. According to research carried out by the European University Institute and the Centre for Media Pluralism and Media Freedom (CMPF), in the EU, the Former Yugoslav Republic of Macedonia, Serbia and Turkey, “there is an average risk of 53% for the area” (an increase of 4% from the previous year report) to media pluralism, a growth that is tied to transparency around media ownership, which as the report states, fluctuates substantially between national jurisdictions, where “only 11 countries scored a low risk level for the indicator on the transparency of ownership.”

As technology has evolved, so has our understanding of what constitutes journalism. Social media and blogging has enabled individuals to take an active role in informing the broader public, challenge power and subvert information vacuums and consolidated media monopolies (both state and private). The Arab uprisings between 2011 and 2013 in the MENA region was a widely documented example of social media and blogging being used to organise protest, counter state misinformation and redraw the media landscape. In many ways these actors, whether bloggers or social media users, have augmented conventional media outlets, whether through the coverage of public protests, monitoring court hearings and elections and scrutinising the legislative process. While this presents its own challenges, especially as we see allegations of astroturfing, paid coverage and lack of professionalisation, in terms of legal literacy and protections, these new actors have revolutionised the speech environment across the globe. To remain relevant the FCO needs to be able to expand its
understanding of journalism and press freedom to adequately protect these new actors that, while frustrating existing definitions, may be at increased risk for carrying out journalistic functions. Working with civil society and other relevant organisations in different countries around the world, revaluating terms and definitions and looking at ways professionalisation of these actors can be supported, in terms of legal and professional processes, would greatly expand the FCO’s ability to protect these actors and press freedom more broadly.

So where we have local media outlets closing, the increased consolidation of media ownership that reduces media plurality and the expansion of citizen journalists, bloggers and social media, we have distinct threats to how audiences access their news and where they may turn if the diminished local and consolidated media output does not represent their interests. When readers turn away from conventional media outlets, many will turn to social media outlets, such as Facebook community groups. While these tools are powerful avenues to facilitate debate, they should not replace media outlets as they lack editorial roles that can fact check all published content, adhere to relevant laws such as defamation, privacy et al and publish content that is necessary in a broader public interest, outwith the make-up of the social media platform or group. The growth of disinformation, misinformation and propaganda has mirrored the growth of social media platforms as the format and structure of these network facilitates the sharing of such content beyond national borders and jurisdictions. So as the reach and independence of conventional media outlets recede we need to be aware of the impact this will have on people sourcing information from alternative sources including social media outlets. This is a distinct challenge that cannot be addressed by legislation or regulation alone. In fact, many attempt to counter what is called ‘fake news’ around the world through legislation represents distinct threats to free expression and press freedom. Laws in Singapore, Russia and Egypt offer broad and unchecked discretion for government agencies (or arm’s length agencies or regulators) to make rulings on what falls within their definition and so should be taken down, with very few opportunities for appeal or independent oversight, as well as the creation of ‘fake news databases’ that can be used to discredit journalism and individual journalists. As there is no fixed definition of ‘fake news’ the FCO should not encourage a legislative approach to countering disinformation and misinformation, instead supporting a more structured approach to education and information literacy, media investment, diversity and plurality, protections for journalistic enterprises, alongside better regulation of social media platforms.

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