

The Future of International Law Freedom of Journalism: A Transitional Justice Framework

Edward L. Carter*

Abstract

The overwhelming majority of digital and physical attacks on journalists are done with impunity. This results in lower-quality journalism, less scrutiny of government, and less healthy societies and democracies. The international human rights law concept of transitional justice could bolster collective will and inform legal mechanisms to combat such impunity. Judges and investigators in several recent cases of attacks on journalists have invoked transitional justice concepts, including truth-telling, criminal investigations and prosecutions, reparations, and institutional reforms to guarantee non-recurrence. These mechanisms should be fully implemented to protect journalism at local, national, and international levels.

* J.D., LL.M., M.St.; Professor of Communications, Brigham Young University.

Table of Contents

I. Introduction	73
II. Impunity in Attacks on Journalists	76
III. Transitional Justice.....	78
IV. Example of Transitional Justice Applied to Impunity for Journalist Attacks: The Case of Jineth Bedoya Lima	80
V. Other Uses of Transitional Justice in Journalist Attack Cases.....	83
A. Daphne Caruana Galizia	83
B. Jamal Khashoggi	85
C. Anna Politkovskaya.....	87
VI. Discussion and Recommendations.....	89
A. Why Transitional Justice?.....	89
B. What Transitional Justice Could Look Like in the Case of Attacks on Journalists.....	90
1. Truth-telling.....	90
2. Investigations and prosecutions	92
3. Reparations	93
4. Non-recurrence	93
VII. Conclusion	93

I. INTRODUCTION

International law protects freedom of expression broadly, and a core purpose of that protection is the search for truth through journalism. Article 19 of the International Covenant on Civil and Political Rights (ICCPR), in particular, protects the right “to seek, receive and impart information and ideas of all kinds.”¹

The United Nations (U.N.) Human Rights Committee’s authoritative interpretation of Article 19 establishes a focused and strong role for journalism within the larger right of freedom of expression. Notably, it states that attacks on journalists are incompatible with Article 19.² In particular, it asserts that journalists should not be prosecuted for disseminating information of legitimate public interest—even when it displeases government officials—as long as national security is not truly threatened,³ and that punishment of journalists for criticizing the government is never acceptable.⁴ Additionally, it states that accreditation of individuals carrying out journalism must be applied in a non-discriminatory way that is not overly restrictive;⁵ that journalists should not be restricted from moving into, out of, and within a country;⁶ and that journalists should not be penalized for reporting about terrorism.⁷ The core of journalistic freedom in international law, this interpretation concludes, is that journalists must have the liberty “to comment on public issues without censorship or restraint and to inform public opinion,”⁸ and that the public has a right to receive journalistic content.⁹

Notwithstanding these protections, journalists across the globe are under constant attack, both physically and virtually. Autocratic leaders in the Philippines, the U.S., Iran, Saudi Arabia, Colombia, Venezuela, Hungary, China, and other countries have allowed or encouraged mistreatment of journalists.¹⁰ The U.N. Educational, Scientific and Cultural Organization (UNESCO) Observatory of Killed Journalists has documented 1,411 journalists slain

¹ International Covenant on Civil and Political Rights art. 19, Dec. 19, 1966, 999 U.N.T.S. 171.

² U.N. Hum. Rts. Comm., General Comment No. 34 to ICCPR Article 19, ¶ 23, U.N. Doc. CCPR/C/GC/34 (Sept. 12, 2011).

³ *Id.* ¶ 30.

⁴ *Id.* ¶ 42.

⁵ *Id.* ¶ 44.

⁶ *Id.* ¶ 45.

⁷ *Id.* ¶ 46.

⁸ *Id.* ¶ 13.

⁹ *Id.* ¶ 14.

¹⁰ *See generally Media Freedom: A Downward Spiral*, FREEDOM HOUSE, <https://perma.cc/T5N3-QMMF>.

between January 1995 and September 2020.¹¹ While the UNESCO Director-General has issued a written condemnation documenting the circumstances of each individual documented journalist killing since 1997, and UNESCO asks each nation where a journalist has been killed to regularly update UNESCO on progress in the investigation of attacks on journalists and prosecution of perpetrators, 1,056 killings (75% of documented cases) are marked by UNESCO as unresolved, meaning no successful investigations and prosecutions have taken place.¹² Additionally, both the Committee to Protect Journalists, a non-governmental entity based in the U.S., and UNESCO, an international body with a global mandate to protect the safety of journalists, have documented a 90% rate of impunity in journalist killings since the 1990s.¹³

Impunity for killings, threats, harassment, and intimidation drives an escalating cycle of violence that can result in self-censorship by journalists and deprivation of information relevant to community members.¹⁴ In one study, journalists in five countries asserted that such a “politics of impunity”¹⁵ drove them to experience fear of direct and indirect threats from government and private actors; helplessness in the face of indifference by police, the public, and journalists’ own employers; isolation due to lack of solidarity among journalists; and perception of no legal redress.¹⁶

In addition to physical and virtual attacks, journalists’ work is often hampered by so-called Strategic Lawsuits Against Public Participation (SLAPPs), in which journalists’ personal finances are crippled by deep-pocketed critics who use the legal system as a weapon to achieve censorship and punishment for critical journalism.¹⁷ Furthermore, disinformation campaigns aimed at journalists and news organizations also have managed, in some cases, to undermine trust in

¹¹ *Observatory of Killed Journalists*, UNESCO, <https://perma.cc/8XFF-57WC>. Some time after the majority of the research discussed in this Essay was conducted, UNESCO changed the format of the database.

¹² *Id.*

¹³ See Jackie Harrison & Stefanie Pukallus, *The Politics of Impunity: A Study of Journalists’ Experiential Accounts of Impunity in Bulgaria, Democratic Republic of Congo, India, Mexico, and Pakistan*, 22 JOURNALISM 303, 304 (2021).

¹⁴ See *Safety of Journalists*, UNESCO, <https://perma.cc/Y2M4-DYW9>.

¹⁵ Harrison & Pukallus, *supra* note 13, at 305. The term “politics of impunity” was coined by these two scholars to describe a governance policy centered on impunity, in which state actors undermine journalism’s influence through self-censorship and enforced exile.

¹⁶ *Id.* at 307–08.

¹⁷ See Bruce Zagaris & Michael Plachta, *Transnational Organized Crime, Fraud and International Sports*, 38 INT’L ENFORCEMENT L. REP. 30, 33 (2022) (noting “the increasing number of cases of [SLAPPs], which are often used to threaten journalists and individuals in order to prevent them from exposing the wrongdoings of those in power”).

journalism and convince a portion of the population that the only reliable source of truth is an autocratic leader or political party.¹⁸

Impunity for attacks on journalists poses a threat to the entire human rights system and society at large.¹⁹ The chilling effect on journalists' coverage results in a less vibrant public sphere, lower-quality democratic decision-making, potential for unrecognized human-rights abuses, and gaps in government accountability.²⁰ And because threats and attacks against journalists implicate the same local government systems and officials ostensibly charged with protecting journalists and bringing their attackers to justice, scholars and international human-rights law experts have called for greater engagement to achieve solutions.²¹

Some recent academic works have explored the problems surrounding journalist safety and have offered solutions.²² Yet a conceptual framework for achieving justice is lacking. This article contends that aspects of the concept of transitional justice, if applied to journalists' safety, could help end widespread impunity. Those concepts include:

- Truth-telling efforts, such as truth commissions, special inquiries, reports, and journalism itself, to document the facts of attacks on journalists and the steps taken to achieve justice;
- Reparations, in the form of money damages to injured journalists and the families of slain journalists;
- Prosecutions of individuals and groups responsible for attacks on journalists; and
- Guarantees of non-recurrence, including government reforms that would strengthen the rule of law so that impunity can be ended.

This Essay first discusses contemporary threats to journalism. Part III explains the concept of transitional justice, which emerged in its modern conception after large-scale human rights abuses in Argentina and Chile in the 1970s and 1980s. Part IV analyzes the use of transitional justice concepts by the Inter-American Court of Human Rights (IACtHR) in the 2021 case of Colombian journalist Jineth Bedoya Lima, who was abducted, tortured, and

¹⁸ See Erin C. Carroll, *How We Talk About the Press*, 4 GEO. TECH. L. REV. 335, 346 (2020) (documenting research showing that use of the term “fake news” in connection with specific news articles resulted in diminished trust by readers and singling out former U.S. President Donald J. Trump for promoting autocracy at the expense of journalists' safety).

¹⁹ See Christof Heyns & Sharath Srinivasan, *Protecting the Right to Life of Journalists: The Need for a Higher Level of Engagement*, 35 HUM. RTS. Q. 304, 306 (2013).

²⁰ See *id.* at 305–06.

²¹ See *id.* at 314.

²² See, e.g., CELESTE GONZÁLEZ DE BUSTAMANTE & JEANNINE E. RELLY, *SURVIVING MEXICO: RESISTANCE AND RESILIENCE AMONG JOURNALISTS IN THE TWENTY-FIRST CENTURY* (2021); Sadia Jamil, *Conclusion*, in *HANDBOOK OF RESEARCH ON COMBATING THREATS TO MEDIA FREEDOM AND JOURNALIST SAFETY* 338 (Sadia Jamil ed., 2020).

sexually assaulted in retaliation for her journalistic work. Part V supplements that analysis with comparisons of the IACtHR's decision in Bedoya's case to the work of other international legal entities that have used transitional justice concepts when addressing attacks on journalists. These include (1) the Malta Board of Inquiry's special inquiry report into the 2017 death of Maltese journalist Daphne Caruana Galizia, (2) U.N. Special Rapporteur Agnès Callamard's report on the 2018 killing of Saudi journalist Jamal Khashoggi, and (3) a 2018 European Court of Human Rights (ECtHR) decision on the killing of Russian journalist Anna Politkovskaya. Finally, Part VI discusses why transitional justice is the appropriate framework for this issue, and makes recommendations as to what transitional justice could look like when applied to impunity in attacks on journalists. Part VII concludes.

II. IMPUNITY IN ATTACKS ON JOURNALISTS

Freedom of media is vital for successful societies. Censorship and overly harsh regulation of mass media, including journalism, harms the development of individuals and communities. Within the sphere of academic research on media freedom, the safety of journalists has emerged in recent years as a particularly important area of inquiry.²³ Among factors contributing to increased risk for journalists are online harassment and threats, armed conflicts, organized crime, scapegoating by public officials, and government corruption.²⁴ One recent large-scale international study concluded that “journalists’ killings around the world suggest that journalism is no more a safe profession and threats to journalists’ safety [are] seriously affecting the freedom of media in many countries.”²⁵

Killings of journalists have become frighteningly commonplace. In the U.S., news outlets have devoted much coverage to the killings of American journalists working abroad, including Brad Will in Mexico in 2006,²⁶ Chris Hondros in Libya in 2011,²⁷ Marie Colvin in Syria in 2012,²⁸ James Foley in Syria in 2014,²⁹ Steven Sotloff in Syria in 2014,³⁰ Luke Somers in Yemen in 2014,³¹

²³ See Jamil, *supra* note 22, at 338.

²⁴ See Sadia Jamil, *Introduction*, in HANDBOOK OF RESEARCH ON COMBATING THREATS TO MEDIA FREEDOM AND JOURNALIST SAFETY xxv–xxvi (Sadia Jamil ed., 2020).

²⁵ *Id.* at xxv.

²⁶ See John Ross, *The Killing of Brad Will*, ILL. TIMES (Aug. 8, 2007), <https://perma.cc/8TXZ-2BA8>.

²⁷ See, e.g., Benazir Wehelie, *He Lost His Life Covering War in Libya. But His Legacy Lives On*, CNN (Mar. 2018), <https://perma.cc/YKS4-58SY>.

²⁸ See Yaffa Fredrick & Annie Cohen, *Media Martyrs: Among Those Who Died While Working as Journalists in the Past 15 Years*, CNN (Nov. 2017), <https://perma.cc/U7KB-T2AQ>.

²⁹ *See id.*

³⁰ See Dexter Filkins, *The Death of Steven Sotloff*, NEW YORKER (Sept. 2, 2014), <https://perma.cc/4Q86-MDAH>.

David Gilkey in Afghanistan in 2016,³² and Christopher Allen in South Sudan in 2017.³³

But much more common than the high-profile killings of foreign correspondents in conflict zones are the killings of local journalists in their own countries, often in their homes, businesses, and cars. Of the 1,056 unresolved killings from 1995 to 2020, 984 (93%) involved local journalists.³⁴ And among local journalists, freelancers often face unique dangers, including lack of organizational support and protection.³⁵

Threats are also a pervasive problem for journalists. Sometimes, threats and attacks come in response to critical news coverage of government, particularly in relation to allegations of corruption and links to crime.³⁶ Many journalists bravely refuse to stop covering crime and corruption in their communities, even in the face of threats, before being killed.³⁷ But in the cases of threatened journalists who were later killed, evidence shows that those prior threats almost never resulted in sufficient police protection or adequate safety measures by news organizations. While the presence of threats is not comprehensively represented in the UNESCO database of killed journalists, prior threats were evident in UNESCO Director-General condemnation statements in 102 (approximately 10%) of the 1,056 unresolved cases.³⁸ A long-term research study by the Committee to Protect Journalists also showed that threats preceded 70% of journalist killings.³⁹

³¹ See Brian Ross et al., *American Hostage Luke Somers Killed in U.S. Rescue Attempt*, ABC NEWS (Dec. 6, 2014), <https://perma.cc/2VM4-T3V5>.

³² See Fredrick & Cohen, *supra* note 28.

³³ See Roy Greenslade, *Why Death of War Reporter Christopher Allen Must Be Made Visible*, GUARDIAN (Sept. 29, 2019), <https://perma.cc/8RD7-EHED>.

³⁴ See UNESCO, *supra* note 11. The author and several students conducted an informal analysis of the UNESCO Observatory of Killed Journalists database that broke out the data for journalists of various types. This analysis indicated that of the 984 local journalists whose killings remained unresolved at the time of analysis, 176 (18%) of them were freelancers rather than permanent staff members of a media outlet.

³⁵ See *id.*

³⁶ See *id.*

³⁷ Journalists Maria Ressa of *The Rappler* in the Philippines and Dmitry Muratov of the independent Russian newspaper *Novaya Gazeta* were recognized in 2021 with the Nobel Peace Prize for their efforts to continue practicing journalism even in the case of government-backed political and legal persecution. See *Nobel Peace Prize: Journalists Maria Ressa and Dmitry Muratov Share Award*, BBC (Oct. 8, 2021), <https://perma.cc/BE4E-9ZE3>.

³⁸ UNESCO, *supra* note 11.

³⁹ See Ramon R. Tuazon & Therese Patricia San Diego Torres, *Digital Threats and Attacks on the Philippine Alternative Press: Range, Responses, and Remedies*, in HANDBOOK OF RESEARCH ON COMBATING THREATS TO MEDIA FREEDOM AND JOURNALIST SAFETY 2 (Sadia Jamil ed., 2020).

Impunity prevails in journalist killings. In the UNESCO data, 1,056 (75%) of the 1,413 total journalist killings since 2005 were unresolved as of September 2020.⁴⁰ Other industry groups place the rate of impunity in journalist attacks at 90%.⁴¹ Even when convictions of low-level figures do take place, as in the cases of Khashoggi and Galizia, the “intellectual authors” of the murders—government officials and others—often go unpunished. In the case of Khashoggi, then-U.S. President Donald J. Trump shielded Saudi Arabia with a raft of disinformation, but the U.S. Office of the Director of National Intelligence concluded that Saudi Crown Prince Mohammed bin Salman ordered Khashoggi’s murder.⁴² Bin Salman has never admitted responsibility, nor has he been held publicly accountable.⁴³

III. TRANSITIONAL JUSTICE

Transitional justice is a concept that responds to human rights violations through the implementation of various measures aimed at preventing the recurrence of such violations. It consists of a temporary set of mechanisms that bridge the gap between what a nation’s justice system currently can do and what it should do in an ideal, permanent context.

Elements of transitional justice have been employed in post-conflict societies for hundreds, if not thousands, of years.⁴⁴ The modern shape of transitional justice began to form after World War II, at the Nuremberg Trials, and advanced further in the 1980s in Argentina and the 1990s in Chile, during efforts to overcome military dictatorships.⁴⁵ In Argentina, efforts to discover the truth of the government’s treatment of the *desaparecidos*⁴⁶ have continued to the present, as have criminal prosecutions of those responsible.⁴⁷ Post-Cold War

⁴⁰ UNESCO, *supra* note 11.

⁴¹ Roy Greenslade, *90% of Journalists’ Murderers Across the World Get Away with It*, *GUARDIAN* (Oct. 28, 2014), <https://perma.cc/S7DA-F7QH>.

⁴² See Aaron Blake, *The Ugly Story of Trump and Jamal Khashoggi is Confirmed*, *WASH. POST* (Feb. 27, 2021), <https://perma.cc/QH3V-SM55>.

⁴³ *See id.*

⁴⁴ See Bronwyn Anne Leebaw, *The Irreconcilable Goals of Transitional Justice*, 30 *HUM. RTS. Q.* 95, 98 (2008).

⁴⁵ See Eric Brahm, *Transitional Justice, Civil Society, and the Development of the Rule of Law in Post-Conflict Societies*, 9 *INT’L J. NOT-FOR-PROFIT L.* 62, 64–71 (2007).

⁴⁶ The term “*desaparecidos*” refers to people who were “disappeared”—kidnapped, tortured, and murdered—by the military junta in this period, after being suspected of left-wing activism and opposition to the government. *See id.* at 63 (noting the movement led by human rights group Mothers of the Plaza de Mayo in Argentina to discover the fates of their disappeared loved ones).

⁴⁷ *See Argentina*, *INT’L CTR. FOR TRANSITIONAL JUST.* (2023), <https://perma.cc/BD4A-VRWC>.

reforms in Eastern Europe have included purges of government officials in Albania and elsewhere.⁴⁸

Today, transitional justice generally consists of measures like truth-telling efforts, such as truth commissions; criminal prosecutions; reparations for those who were victimized; and institutional reforms to guarantee non-recurrence. The goals of transitional justice center on restoring the rule of law and achieving accountability and reconciliation, as well as acknowledging the dignity and humanity of people who were subjected to indignities and dehumanization by perpetrators of injustices. As scholar and former U.N. Special Rapporteur Pablo de Greiff wrote, transitional justice in particular seeks to recognize victims as individual human beings with agency.⁴⁹ Transitional justice also seeks to promote civic trust through “redress[ing] the legacies of massive human rights abuses,” primarily by actually “giving force to human rights norms that were systematically violated.”⁵⁰

Opponents of transitional justice argue that truth commissions, criminal prosecutions, reparations, and other efforts will only exacerbate conflict, foster division, and even facilitate cycles of revenge. Sometimes those implementing transitional justice effectively navigate these challenges, and sometimes they do not. A Truth and Reconciliation Commission in South Africa in the wake of Apartheid, for example, sought not to place blame but rather to foster inclusive dialogue and “listen[] carefully to the complex motives and perspectives of all those involved.”⁵¹ But in another case, some revenge or reprisal killings occurred in Rwanda and Kosovo following international criminal tribunals for human-rights violations there, and survivors grew frustrated with lenient sentences or reversals of convictions on appeal.⁵²

Ultimately, the goals of transitional justice—for example, achieving closure, on the one hand, and preserving memory as a deterrent, on the other—can sometimes come into conflict with one another, and those conflicts must be carefully navigated.⁵³ But on the whole, transitional justice is a worthy and effective concept, and one that can effectively rehabilitate societal and government systems after cases of human rights abuse.

⁴⁸ See Robert C. Austin & Jonathan Ellison, *Post-Communist Transitional Justice in Albania*, 22 E. EUR. POL. & SOC'IES 373, 379 (2008).

⁴⁹ Pablo de Greiff, *Theorizing Transitional Justice*, 51 NOMOS 31, 42 (2012).

⁵⁰ *Id.* at 40.

⁵¹ Leebaw, *supra* note 44, at 111.

⁵² See *id.* at 114.

⁵³ See *id.* at 118.

IV. EXAMPLE OF TRANSITIONAL JUSTICE APPLIED TO IMPUNITY FOR JOURNALIST ATTACKS: THE CASE OF JINETH BEDOYA LIMA

The decade of the 1990s was deadly for journalists in Colombia, primarily due to the existence of multiple armed, desperate groups. Right-wing paramilitary groups, often aligned with the government, battled leftist rebels in the Revolutionary Armed Forces of Colombia (FARC)—and ordinary citizens were often caught in the crossfire.⁵⁴ Journalists, seeking to document this state of turmoil, also became targets of threats, sexual violence, and killings. The Colombian legal system’s inability to bring killers of journalists to justice in the overwhelming majority of cases led to a “widespread context of impunity” with respect to assassinations of journalists.⁵⁵

Female journalists, in particular, were targeted because of the high-profile nature of their work, with some attacks displaying clear gender-based motives. In the midst of this tumult, female journalist Jineth Bedoya Lima began her professional career in Colombia in 1995.⁵⁶ In addition to reporting for newspaper *El Espectador*, Bedoya worked in radio and TV news. She founded an organization called “No Es Hora de Callar” (“No Time to Be Quiet”) to fight impunity for attacks on Colombian women.⁵⁷

Bedoya began reporting on Colombian prisons while still a journalism student at Universidad Central in Bogotá.⁵⁸ On the morning of Thursday, May 25, 2000, she got dressed in the apartment she shared with her mother; she wore a pink blouse, black pants, and her favorite sensible black shoes.⁵⁹ She traveled to La Modelo prison with a male editor and photographer. Bedoya had been inside the prison many times, reporting on corruption, violence, overcrowding and squalid conditions. On that day, she believed she was going to interview a paramilitary leader known as “Panadero.” From him, Bedoya wanted to find out more details about a deadly prison riot in which paramilitaries wielding clandestine firearms and bombs squared off against rebels or guerillas inside the prison.⁶⁰ As she waited at the prison entrance, her editor was called away on a pretense; then, Bedoya was immediately taken at gunpoint and transported to an

⁵⁴ See Case of Bedoya Lima et al. v. Colombia, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 431, ¶¶ 41–42 (Aug. 26, 2021).

⁵⁵ *Id.* ¶ 43.

⁵⁶ See *id.* ¶ 52.

⁵⁷ See *id.*

⁵⁸ See JINETH BEDOYA LIMA, *TE HABLO DESDE LA PRISIÓN: DONDE SE HUELE Y RESPIRA LA MUERTE* [I SPEAK TO YOU FROM PRISON: WHERE YOU SMELL AND BREATHE DEATH] 40 (2017).

⁵⁹ *Id.* at 38, 55.

⁶⁰ *Id.* at 40–41, 53.

abandoned warehouse.⁶¹ She was beaten, raped, made to eat her own notebook paper, and threatened with death.⁶² She recalled later that she had hoped she would die.⁶³ But eventually, her persecutors abandoned her, and she was found by a taxi driver, who took her to a police station.⁶⁴

Although the Colombian police made some attempts to investigate the crime against Bedoya, and three men were convicted and imprisoned for participating in her kidnapping and torture, Bedoya continued to be targeted for her work as a journalist. Her telephone calls were intercepted; she was kidnapped another time by the FARC in 2003, this time for five days; and the police team assigned to protect her was even suspected of having participated in kidnappings.⁶⁵ She received numerous threats through the newspaper office and on her personal telephone.⁶⁶

In 2019, almost two decades after Bedoya's ordeal in May 2000, the Inter-American Commission on Human Rights submitted a case to the Inter-American Court of Human Rights (IACtHR) on her behalf, alleging that Colombia had failed "to adopt adequate and timely measures to protect [her] and prevent the facts from taking place."⁶⁷ Bedoya testified before the Court not only about her own experiences, but also about the experiences of other female Colombian journalists who refused to cease reporting on crime and corruption, and who had often been forced to flee their homes and go into hiding to avoid being killed.⁶⁸

In the IACtHR's discussion of the legal failures of the Colombian government during its investigation and prosecution of Bedoya's case in the early 2000s, the Court focused on three points. First, it found that the state had failed to account for the gender-specific aspects of Bedoya's case. Not only had Bedoya been the victim of sexual crimes, but her mother had also suffered primary trauma due to harassment and intimidation and secondary trauma on account of her worry for her daughter.⁶⁹ Second, it concluded that Colombia's legal processes had been too slow, and that justice so delayed was, effectively, justice denied.⁷⁰ Third, it found that the Colombian government had not

⁶¹ *Id.* at 56–57.

⁶² *Id.* at 57–58.

⁶³ *Id.* at 58–59.

⁶⁴ *Id.* at 59.

⁶⁵ *See Bedoya Lima et al. v. Colombia*, *supra* note 54, ¶¶ 79–80.

⁶⁶ *See id.*

⁶⁷ *Id.* ¶ 1.

⁶⁸ *Id.* ¶ 51.

⁶⁹ *Id.* ¶¶ 134–40.

⁷⁰ *Id.* ¶¶ 125–33, 141–46.

diligently investigated the threats and minor aggressions on Bedoya that preceded the major aggression, thus contributing to a culture of impunity.⁷¹

In its resolution of the case, the IACtHR employed several notable methods of transitional justice. First, it ordered reparations for Bedoya, explaining that states are under a customary norm of international human rights law to make adequate recompense whenever a human rights violation has occurred in their jurisdiction.⁷² Ideally, it noted, reparations would restore the person to their prior condition; but, if that is impossible, then reparations should attempt to repair damages and mitigate consequences as much as possible.⁷³ With that in mind, the Court awarded Bedoya with money damages, ordering Colombia to pay Bedoya and her mother \$30,000 each for medical costs.⁷⁴ Separately, the Court awarded damages and attorneys' fees of approximately \$250,000 to Bedoya, her mother, and the lawyers and organizations that worked on their behalf.⁷⁵ But, given the nature of the human rights violations Bedoya suffered, the Court also concluded that non-monetary, gender-conscious reparations were appropriate. Thus, it ordered the Colombian government to expeditiously complete its criminal investigations and prosecutions in Bedoya's case, with specific instructions that Bedoya not be re-victimized in the process and that prejudicial gender bias be avoided.⁷⁶

The IACtHR also required the state to take truth-telling measures. In particular, it ordered the government to publish the Court's opinion online for at least one year, to ensure the widespread distribution of a documentary film titled *No Es Hora de Callar* on a weekly basis for at least five years, and to collect and publish statistics and facts relating to violence against journalists.⁷⁷ Further, it was ordered to create a public center for memory and dignity, to honor women who had suffered sexual violence during the armed conflict with the FARC, and to honor the role of investigative journalism during that period, with a specific focus on the contributions of women journalists.⁷⁸ The Court went so far as to specify some of the permanent and temporary displays the center had to contain, and to require Colombia to support the museum at the level of \$200,000 annually or more.⁷⁹

⁷¹ *Id.* ¶¶ 147–53.

⁷² *Id.* ¶ 163.

⁷³ *Id.* ¶¶ 163–66.

⁷⁴ *Id.* ¶ 183.

⁷⁵ *Id.* ¶ 198–217.

⁷⁶ *Id.* ¶ 172.

⁷⁷ *Id.* ¶ 224.

⁷⁸ *Id.* ¶ 190.

⁷⁹ *Id.* ¶ 191.

The Court also required guarantees of non-recurrence. Colombia was obligated to create and implement, within two years, a training program for government and law enforcement officials on protecting women journalists.⁸⁰ It also ordered the government to create an annual \$500,000 fund for the protection and assistance of journalists subjected to threats and violence.⁸¹

V. OTHER USES OF TRANSITIONAL JUSTICE IN JOURNALIST ATTACK CASES

A. Daphne Caruana Galizia

Daphne Caruana Galizia was an investigative journalist in Malta from the 1980s until her death in 2017. Her investigative reporting work on government corruption was particularly effective, to the point that Maltese Prime Minister Joseph Muscat considered her to be his main political opposition.⁸² In particular, Galizia reported—in connection with the Panama Papers leak—that family members and associates of Prime Minister Muscat had potentially corrupt business dealings.⁸³ Galizia became a national scapegoat and had to face dozens of frivolous defamation lawsuits—SLAPPs—aimed at intimidating her and causing her to stop reporting.⁸⁴ She was stalked at the beach and accosted in the street.⁸⁵ She was repeatedly called a “witch” and received nasty letters and phone calls, as did her children.⁸⁶ Other journalists, too, were subject to harassment and surveillance.⁸⁷ In 2017, Galizia was killed by a car bomb.⁸⁸

In 2019, after many appeals by family members and journalism organizations, the government of Malta finally appointed a three-judge panel to investigate Galizia’s death and make a public report. The resulting 447-page document included input from 120 witnesses during ninety-three separate

⁸⁰ *Id.* ¶ 189.

⁸¹ *Id.* ¶¶ 194–96.

⁸² *See* BD. OF INQUIRY: DAPHNE CARUANA GALIZIA, PUBLIC INQUIRY REPORT: DAPHNE CARUANA GALIZIA, A JOURNALIST ASSASSINATED ON 16TH OCTOBER 2017 72 (Daphne Caruana Galizia Found. trans., Oct. 24, 2021), <https://www.documentcloud.org/documents/21114883-public-inquiry-report-en>. For the original Maltese version of this source, see *Rapport ta’ Inkjesta Pubblica: Daphne Caruana Galizia, Ġurnalista Assassinata fis-16 ta’ Ottubru 2017*, BORD TA’ INKJESTA DAPHNE CARUANA GALIZIA (July 29, 2021), <https://perma.cc/GT9G-KN4S>.

⁸³ BD. OF INQUIRY: DAPHNE CARUANA GALIZIA, *supra* note 82, at 68–75.

⁸⁴ *Id.* at 368–69, 378–79.

⁸⁵ *Id.* at 367.

⁸⁶ *Id.* at 260.

⁸⁷ *Id.* at 372.

⁸⁸ *Id.* at 281.

sittings, as well as documentary evidence.⁸⁹ While comprehensive, the report was not directly part of the criminal investigation and prosecution of Galizia's killers, but rather was created to be presented to the Prime Minister of Malta and to the public. Still, the panel's work represents an important truth-telling effort about the circumstances of Galizia's death and the harassment and surveillance of other journalists;⁹⁰ the report also incorporates other aspects of transitional justice in its findings and recommendations.

The specific objectives of the inquiry were to determine state responsibility for Galizia's death and to establish whether Malta has sufficient legal and practical mechanisms to overcome impunity in attacks on journalists and others.⁹¹ The judges at the outset stated that their purposes were to establish facts, consider responsibility, make recommendations for non-recurrence, ascertain the existence of cause for criminal prosecution, restore public confidence, and provide opportunities for reconciliation and resolution.⁹² The panel particularly noted the command of the ECtHR that countries protect journalists for the purpose of enabling free public debate, even when the ideas expressed in their reports are contrary to the personal interests of public authorities.⁹³

The report concluded that a culture of impunity surrounded Maltese government officials and business executives, and that this culture contributed to Galizia's killing.⁹⁴ The panel noted that Galizia was subjected to threats, a prior assassination attempt, and a "dehumanisation campaign" in which government officials exposed her to contempt and hate through false accusations and insinuations.⁹⁵ Galizia's work to uncover corruption ties between politics and big business was so effective that, according to the inquiry, "she had become Public Enemy No. 1 on the two sides of the political sphere."⁹⁶ The government utterly failed to protect her, even in light of clear evidence that her life was in danger.

In line with the concept of transitional justice, the judges concluded that Malta needed to take steps to guarantee non-recurrence. Those steps included strengthening its laws against public and corporate corruption; outlawing obstruction of justice by public officials; targeting organized crime; and working

⁸⁹ *Id.* at 4.

⁹⁰ *Id.* at 376–77.

⁹¹ *Id.* at 8–13.

⁹² *Id.* at 14–15.

⁹³ *Id.* at 67.

⁹⁴ *Id.* at 128–38, 152–88, 269–70.

⁹⁵ *Id.* at 256–61.

⁹⁶ *Id.* at 341.

to remove from their positions police, investigators, and public officials who failed to investigate and prosecute crime.⁹⁷

In keeping with international human rights law precedents, the judges resolved that Malta should take proactive prevention measures when journalists—particularly women journalists—are threatened.⁹⁸ The panel recommended that Malta adopt a law against SLAPPs, particularly in light of the forty-seven lawsuits that were pending against Galizia at the time of her death.⁹⁹ The jurists also recommended that Malta implement steps to immediately investigate violence and threats against journalists and to dedicate a specific unit within the police force to safeguard journalists.¹⁰⁰ They suggested that a committee of experts from journalism and academia be empaneled to recommend other protections for journalists in the law and constitution of Malta.¹⁰¹ The report noted that Malta did take a positive step when, after Galizia's death, it eliminated criminal libel law.¹⁰²

B. Jamal Khashoggi

Jamal Khashoggi was a Saudi journalist, author, and columnist for multiple regional and worldwide news outlets.¹⁰³ He was a passionate voice for Arab press freedom and, with two million Twitter followers, had a large personal platform.¹⁰⁴ Khashoggi was particularly critical of the Saudi government and monarchy, and as a result he was forced to leave Saudi Arabia in 2017 for the U.S. as an exile.¹⁰⁵ But on October 2, 2018, while in Istanbul, Turkey, Khashoggi was lured into the Saudi Arabian consulate on the pretense of obtaining paperwork he needed to marry his fiancée, Hatice Cengiz.¹⁰⁶ Inside the consulate, fifteen Saudi intelligence and military officers ambushed Khashoggi, and phone calls recorded by Turkey demonstrated that the Saudis had made

⁹⁷ *Id.* at 320–31.

⁹⁸ *Id.* at 356.

⁹⁹ *Id.* at 381.

¹⁰⁰ *Id.* at 391–93.

¹⁰¹ *Id.* at 445–46.

¹⁰² *Id.* at 395.

¹⁰³ See Agnès Callamard (Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions), *Annex to the Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions: Investigation into the Unlawful Death of Mr. Jamal Khashoggi*, U.N. Doc. A/HRC/41/CRP.1, ¶¶ 56–59 (June 19, 2019).

¹⁰⁴ *Id.*

¹⁰⁵ *Id.* ¶¶ 64–65.

¹⁰⁶ *Id.* ¶ 24.

detailed plans to drug, kill, and dismember Khashoggi and carry his body parts away.¹⁰⁷

In 2019, Agnès Callamard, then serving as U.N. Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, completed a ninety-nine-page report investigating the circumstances surrounding Khashoggi's death.¹⁰⁸ Although Saudi Arabia claimed to have detained twenty-one people and indicted eleven of them in connection with Khashoggi's death, Callamard concluded that high-level Saudi government officials—including Crown Prince Mohammed bin Salman—were responsible for ordering, or at least tacitly approving, the killing.¹⁰⁹ She faulted Turkey, the U.S., and Saudi Arabia for failing to adequately investigate the crime and ensure accountability.¹¹⁰

Further, Callamard's report indicated that Saudi Arabia needed to implement various transitional justice measures in the wake of Khashoggi's death. It stated first that international human rights law granted Khashoggi's survivors a right to justice through criminal prosecution, reparations, and access to relevant information about the state's efforts.¹¹¹ It also concluded that Saudi Arabia's duty to guarantee non-repetition of unlawful violence against journalists should extend to measures such as ensuring civilian control of the military; strengthening the independence of the judiciary; protecting journalists and human rights defenders; and providing human rights education for law enforcement, police, and security forces.¹¹²

While Saudi Arabia claimed to have already restructured its intelligence apparatus to ensure non-repetition, Callamard's report said that its actions were insufficient.¹¹³ She instead called for Saudi Arabia to release individuals who were imprisoned for expressing their opinions; investigate allegations of torture in detention facilities; investigate allegations of enforced disappearances; and make an in-depth study of the "actors, institutions and circumstances that made it possible for the execution of Mr. Khashoggi to be carried forward."¹¹⁴ Callamard also called on companies and individuals doing business with Saudi Arabia to assess whether their products and services were being used to cover up human rights violations and to speak up against such violations.¹¹⁵

¹⁰⁷ *Id.* ¶ 91.

¹⁰⁸ *See generally id.*

¹⁰⁹ *Id.* ¶ 257.

¹¹⁰ *Id.* ¶¶ 15–23.

¹¹¹ *Id.* ¶ 408.

¹¹² *Id.* ¶ 414.

¹¹³ *Id.* ¶ 20.

¹¹⁴ *Id.* ¶ 417.

¹¹⁵ *Id.* ¶¶ 450–51.

Callamard then extended her transitional-justice-style recommendations to the international sphere, specifically calling for focused efforts within the international human rights law system in three areas. First, she advocated for a gathering of best practices aimed toward setting international law standards for investigations of threats made to journalists.¹¹⁶ Second, she called for the creation of a task force of special rapporteurs who would undertake rapid response missions to advocate and support effective investigations in cases of attacks on journalists, as well as to conduct fact-finding themselves.¹¹⁷ Third, she asked for the creation of a standing international mechanism to ensure investigation of crimes against journalists by international experts and supported by U.N. staff,¹¹⁸ suggesting that this body could share investigatory materials with local authorities.

C. Anna Politkovskaya

Anna Mazepa was born in New York to Ukrainian parents working as diplomats at the U.N., and grew up in Moscow.¹¹⁹ She joined the newspaper *Novaya Gazeta* as a journalist in 1999, writing under the name Anna Politkovskaya.¹²⁰ She primarily reported on Russian military operations in Chechnya, focusing on human rights abuses by the Russian military and the Russian-backed Kadyrov administration; Politkovskaya was also a bold and frequent critic of Russian President Vladimir Putin.¹²¹ After reporting on the torture, rape, and killing of Chechens, she was detained by Russian military in 2001.¹²² She suffered beatings and death threats on several occasions. She was shot in the elevator of her Moscow apartment building on October 7, 2006.¹²³

In the wake of her death, former U.K. Prime Minister Gordon Brown wrote that Politkovskaya's "fearlessness must never be forgotten, and there must be an international commission to investigate both Anna's death and the human rights abuses she uncovered."¹²⁴ But the investigations Brown called for never

¹¹⁶ *Id.* ¶¶ 464–65.

¹¹⁷ *Id.* ¶ 466.

¹¹⁸ *Id.* ¶ 472.

¹¹⁹ See James Meek, *Dispatches from a Savage War*, GUARDIAN (2004), <https://perma.cc/XZD3-PDEG>.

¹²⁰ See Finley Muratova, *The Murder of Anna Politkovskaya Is Still Not Solved*, NATION (Aug. 5, 2021), <https://perma.cc/U678-73QP>.

¹²¹ See *Case of Mazepa and Others v. Russia*, App. No. 15086/07, ¶ 6 (July 17, 2018), <https://perma.cc/3MN3-LDFQ>.

¹²² See *Anna Politkovskaya*, COMM. TO PROTECT JOURNALISTS (2023), <https://perma.cc/QM6D-RTYD>.

¹²³ See *Case of Mazepa and Others v. Russia*, *supra* note 121, ¶ 7.

¹²⁴ Gordon Brown, *Anna Politkovskaya: 'She Paid the Ultimate Price for Integrity'*, INDEPENDENT (Mar. 11, 2011), <https://perma.cc/XU47-JUQQ>.

took place. Instead, Russian authorities at first delayed any kind of investigation and then eventually conducted sham investigations that did not result in justice.¹²⁵ In 2014, five individuals were convicted of crimes relating to Politkovskaya's murder.¹²⁶ The alleged organizer and alleged hitman were each sentenced to life in prison, while three others were sentenced to prison terms ranging from twelve to twenty years.¹²⁷ But, notably, Russia took no efforts to “identify[] the intellectual author of the crime, that is, the person or people who commissioned the assassination.”¹²⁸

Politkovskaya's mother and children were forced to take matters into their own hands, and ultimately brought her case before the ECtHR. In 2018, the ECtHR held Russia liable for violations of Politkovskaya's rights under the European Convention on Human Rights—specifically, the right to life guaranteed in Article 2.¹²⁹ The ECtHR described the investigation into Politkovskaya's death as inadequate, ineffective, and unreasonable.¹³⁰ For one, the investigation was not sufficiently prompt, because it began in 2006 and still had not concluded as of 2018.¹³¹ It also faulted Russia for failing to provide its investigation file for ECtHR review, and for not pursuing the person who commissioned Politkovskaya's murder, “a well-known Russian former politician in London” who had died in 2013.¹³²

The primary contribution of the Politkovskaya decision with respect to transitional justice measures in journalist attack cases was to emphasize that international law establishes the obligation of governments to conduct effective investigations into the killings of journalists. Prosecutions can contribute to accountability and, ultimately, societal healing if they employ adequate measures, are prompt, involve the victim's family, and are independent.¹³³ Additionally, in the case of slain journalists, the investigation must also determine whether the killing was related to the victim's journalistic work.¹³⁴

¹²⁵ See *Case of Mazepa and Others v. Russia*, *supra* note 121, ¶ 81.

¹²⁶ *Id.* ¶ 36.

¹²⁷ *Id.* ¶ 37.

¹²⁸ *Id.* ¶ 75.

¹²⁹ *Id.* ¶ 82.

¹³⁰ *Id.*

¹³¹ *Id.* ¶ 81.

¹³² *Id.* ¶ 77.

¹³³ See *id.* ¶ 77, 81–82; notes 129–132 and accompanying text.

¹³⁴ See *Case of Mazepa and Others v. Russia*, *supra* note 121, ¶¶ 77, 81–82.

VI. DISCUSSION AND RECOMMENDATIONS

A. Why Transitional Justice?

As outlined in Parts IV and V, various sources have recently suggested the implementation of transitional justice in cases involving attacks on journalists. But why is transitional justice a good remedy in such cases?

First, application of transitional justice concepts by domestic and international legal authorities would appropriately recognize the scope and scale of the problem. Digital and physical attacks on journalists are on par with the most serious human rights abuses, given the high rate of impunity and the resulting damage to transparent and free societies.¹³⁵ Application of transitional justice would amount to a recognition that current approaches to justice are not working and that some countries lack the capacity and willpower to protect journalism.

Second, transitional justice provides a set of well-tried and relatively well-understood approaches to address a lack of justice through existing mechanisms.¹³⁶ If existing local, national, and international legal systems were capable of handling the problem, then transitional justice would not be needed. Of course, some local and national systems are capable of handling attacks against journalists, but the problem has nevertheless persisted over several decades. Rather than just continuing to name and describe the problem, transitional justice provides hope for progress and a concrete solution.

Third, transitional justice places the issue of impunity for attacks on journalists squarely within the sphere of international human rights law.¹³⁷ Achieving justice and ending impunity should not be subject to a margin of appreciation or national deviation. While in times of emergency some national restrictions on freedom of expression might be allowed under international human rights law treaties, General Comment 34 to Article 19 of the ICCPR makes clear that any restrictions on journalism would need the highest justification and that jailing, attacking, and killing journalists are unacceptable regardless of the state purpose.¹³⁸ Adopting journalist protections under the rubric of transitional justice would ensure that countries cannot adopt a state policy of impunity.

¹³⁵ See Heyns & Srinivasan, *supra* note 19, at 305–07.

¹³⁶ See, e.g., Brahm, *supra* note 45 (providing examples, including in Chile and Argentina, of mostly successful transitional justice efforts incorporating contributions from various aspects of civil society).

¹³⁷ See generally Heyns & Srinivasan, *supra* note 19 (arguing that the nature of threats facing journalists requires solutions at national and international levels).

¹³⁸ See U.N. Human Rights Committee, General Comment No. 34 to ICCPR Article 19, ¶¶ 2–3, U.N. Doc. CCPR/C/GC/34 (Sept. 12, 2011).

Finally, the use of transitional justice in journalist attacks would be a step toward implementation of the progressive legal mechanisms advocated by Callamard in her report about Khashoggi's killing.¹³⁹ Thus far, the international law community has not acted perceptibly on her recommendations. There has not been a concerted effort in the U.N. or elsewhere to organize a method of standard-setting for threats, nor has there been organization of a special procedures task force (composed of several special rapporteurs) and a standing instrument investigatory body that would bolster local investigatory authorities. A true international commitment to addressing the problem of journalist attacks and killings could involve application of transitional justice as an umbrella framework for moving toward the kind of semi-permanent or permanent solutions proposed by Callamard and, perhaps, a standalone international treaty on the issue.

B. What Transitional Justice Could Look Like in the Case of Attacks on Journalists

Given the above justifications for applying transitional justice to cases of attacks on journalists, it is important to envision what that application would look like in those situations.

1. Truth-telling

First, various institutions must be created for or dedicated to the work of truth-telling, as to both the facts surrounding attacks on journalists and the details of investigations journalists may have been working on that created motives for an attack. Some private organizations have already begun this work. In the wake of Galizia's death, for example, forty-five journalists from eighteen news organizations in fifteen countries formed the Daphne Project, picking up on her work and ultimately publishing widely read pieces on corruption in Malta.¹⁴⁰

Similarly, a consortium of sixty news organizations and 150 journalists from forty-nine different countries, working under the nonprofit umbrella Forbidden Stories, has come together to address crimes committed against journalists and to continue the work of journalists killed because of their profession.¹⁴¹ For instance, in early 2023, thirty news media outlets around the world published news content under the header "Story Killers," a continuation

¹³⁹ Callamard, *supra* note 103, ¶¶ 464–72.

¹⁴⁰ See Aida Cerkez, *You Don't Kill a Story by Killing a Journalist*, ORGANIZED CRIME & CORRUPTION REPORTING PROJECT (Oct. 16, 2022), <https://perma.cc/7Q2X-Z5SE>.

¹⁴¹ See generally FORBIDDEN STORIES, <https://perma.cc/XF2K-9S6D>.

of the work of slain Indian journalist Gauri Lankesh.¹⁴² Lankesh wrote about disinformation for a South Indian weekly before she was killed in 2017. At the time of her death, she had been working on a project titled “In the Age of False News” that denounced India’s “lie factories.”¹⁴³ Forbidden Stories took its inspiration from the twenty-eight newspapers and TV stations around the U.S. that picked up the investigative journalism work of Don Bolles after he was killed in a car bombing in Phoenix, Arizona in 1976.¹⁴⁴

Ideally, under the transitional justice framework, truth-telling should be undertaken at an official level. One model for such a mechanism has arisen in recent years. The People’s Tribunal on the Murder of Journalists, created in the Hague on November 2, 2021—a day designated as the U.N.’s official International Day to End Impunity for Crimes Against Journalists—is a self-appointed truth commission for killed journalists in three countries.¹⁴⁵ At its first session, it planned to conduct hearings in several notable cases: the 2009 murder of Sri Lankan journalist Lasantha Wickrematunge, the 2015 death in prison of Syrian journalist Nabil Walid Al-Sharbaji, and the 2011 killing of Mexican journalist Miguel Ángel López Velasco.¹⁴⁶

Although the People’s Tribunal does not claim to have binding legal authority, its proceedings are structured like international criminal prosecutions, with an indictment laying out the charges against each nation, a prosecutor, witnesses, and judges.¹⁴⁷ The panel of nine judges, which includes human rights law experts, jurists, and journalists, issued judgments during the Tribunal’s final session in 2022.¹⁴⁸ While acknowledging that its process will not result in actual legal liability, the People’s Tribunal aims to give relatives and colleagues of murdered journalists a forum to speak truth and build a public record against

¹⁴² See Phineas Rueckert, *In the Age of False News: A Journalist, a Murder, and the Pursuit of an Unfinished Investigation in India*, FORBIDDEN STORIES (Feb. 14, 2023), <https://perma.cc/8YWY-39MP>.

¹⁴³ *Id.*

¹⁴⁴ In 2023, the *Washington Post* did something similar, picking up the investigative work of Las Vegas journalist Jeff German, who was murdered in 2022. See Jeremy Barr, *An Investigative Reporter Was Slain. What About His Unfinished Story?*, WASH. POST (Feb. 3, 2023), <https://perma.cc/4ELH-W6QH>.

¹⁴⁵ See generally PEOPLE’S TRIBUNAL ON THE MURDER OF JOURNALISTS, <https://perma.cc/T5WB-S4N6>.

¹⁴⁶ See *Case Hearings*, PEOPLE’S TRIBUNAL ON THE MURDER OF JOURNALISTS (2023), <https://perma.cc/4Y2L-7S4D>.

¹⁴⁷ See *The Permanent People’s Tribunal*, PEOPLE’S TRIBUNAL ON THE MURDER OF JOURNALISTS (2023), <https://perma.cc/3YPD-A58V>.

¹⁴⁸ See *Closing Hearing: Delivery of the Judgment*, PEOPLE’S TRIBUNAL ON THE MURDER OF JOURNALISTS (2022), <https://perma.cc/FLZ6-AZY7>.

impunity in journalist killings.¹⁴⁹ The Tribunal also released case files with evidence implicating those involved in each of the deaths.¹⁵⁰

2. Investigations and prosecutions

Second, national and international processes for investigating and prosecuting killers of journalists need to be improved. While the international community has yet to act on Callamard's three recommendations in her report on Khashoggi's death,¹⁵¹ these are important ideas that could still serve as examples at the national level. Even if the international community does not act on Callamard's framework, nations could choose to establish their own standards for dealing with threats against journalists, and to empanel their own expert task forces and investigatory bodies specifically attuned to attacks on journalists. Additionally, the criteria the ECtHR developed for an effective investigation—namely, employment of adequate measures, promptness, independence, involvement of the victim's family, and determination of whether the killing was related to the victim's journalistic work—provide a good starting point for future investigative efforts.¹⁵²

Mexico provides an example of the kinds of efforts states could undertake in investigation and prosecution: in the past decade, the Mexican federal government has put in place several mechanisms aimed to end attacks on journalists. While these mechanisms have not solved the problem, and impunity for journalist killings remains prevalent, they nonetheless showcase some possibilities for how states could improve their justice systems. In 2012, for instance, the Mexican federal government established a protection agency, the Federal Mechanism for the Protection of Human Rights Defenders and Journalists, which is designed to assess threats against journalists and take action to protect them, including by providing “bodyguards, panic buttons, safehouses, camera systems, bulletproof vehicles, and groceries,” as well as by relocation.¹⁵³ Some journalists have credited the system with saving their lives, but it is hampered by inadequate personnel and funding.¹⁵⁴ Additionally, the federal attorney general's office has established a Special Prosecutor for Attention to Crimes Committed Against Freedom of Expression, charged with federalizing

¹⁴⁹ See Hamid Mir, *Too Many Journalists are Dying on the Job. The People's Tribunal is About to Name and Shame the Killers*, WASH. POST (Oct. 26, 2021), <https://perma.cc/M4FW-EN3C>.

¹⁵⁰ See *Documentation*, PEOPLE'S TRIBUNAL ON THE MURDER OF JOURNALISTS (2022), <https://perma.cc/3BKT-DFR3>.

¹⁵¹ Callamard, *supra* note 103, ¶¶ 464–72.

¹⁵² See *Case of Mazepa and Others*, *supra* note 121, ¶ 70.

¹⁵³ See Jan-Albert Hootsen, *When it Comes to Protecting Journalists, Mexico's Safety Mechanism Comes Up Short*, COMM. TO PROTECT JOURNALISTS (Dec. 17, 2019), <https://perma.cc/ZQT8-BFEH>.

¹⁵⁴ *Id.*

prosecutions for journalist killings.¹⁵⁵ But in practice, the entity defers to state and local law enforcement, where corruption feeds impunity.¹⁵⁶

Although Mexico's measures are imperfect, they and measures like them should be supported, improved, and replicated in other countries.

3. Reparations

Third, an organized reparations program for journalist killings should be undertaken. In Bedoya's case, the IACtHR ordered money damages, and that is one appropriate remedy.¹⁵⁷ But reparations should also include efforts to restore the free flow of newsworthy information to the public and combat the chilling effect that accompanies impunity. While a state government may not be fit to accomplish this alone, it can at least ensure that journalists are free to do their work. The IACtHR also suggested that state governments could create or support panel discussions, documentaries, conferences, book presentations, theatrical performances, and websites aimed at giving or restoring a voice to journalist victims of human rights violations.¹⁵⁸

4. Non-recurrence

Fourth, national and international authorities should take greater measures to ensure institutional reform and guarantee non-recurrence of attacks on journalists. In the Bedoya case, the IACtHR ordered training to be provided to government employees, especially those in law enforcement, about the unique challenges faced by women journalists in conflict zones.¹⁵⁹ In some cases, institutional reform could mean administrative purging: causing corrupt or criminal government employees, including law enforcement officials, to lose their jobs and be barred from future public employment. Such measures may be necessary to restore the public's trust in public institutions and the people who inhabit them.

VII. CONCLUSION

The killings of journalists in countries across the globe should not go unpunished. Investigations into their deaths must be adequate, prompt, and independent; the perpetrators and intellectual authors of such killings must be held accountable; and the journalists and their families must be recognized as

¹⁵⁵ See Jan-Albert Hootsen, *Despite Convictions, Justice for Murdered Journalists in Mexico Remains Abstract*, CPJ (Oct. 28, 2020), <https://perma.cc/J3ZV-NLGW>

¹⁵⁶ *Id.*

¹⁵⁷ *Bedoya Lima et al. v. Colombia*, *supra* note 54, ¶ 183.

¹⁵⁸ *Id.* ¶ 190.

¹⁵⁹ *Id.* ¶ 189.

moral agents with dignity and humanity who are deserving of reparations, reconciliation, and the promise of a more secure future under the rule of law.

The conceptual framework of transitional justice outlined in this Essay will not be a panacea for impunity in the killings of journalists. But it has the potential to galvanize the collective will of communities around the world to bring the killers of journalists to justice, and to thereby support the efforts of journalists to accomplish newsgathering and reporting, for the betterment of all. The solutions, like the problems, should account for gender aspects. The IACtHR's 2021 decision in the *Bedoya* case provides a blueprint for a gender-conscious application of transitional justice to become the conceptual framework to end impunity in journalist killings. The end of impunity through transitional justice would increase and improve journalism on critical issues in places that need it.