



Human Rights at Home: Media, Politics, and the Safety of Journalists
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Chairman Hastings, Co-Chairman Wicker, members of the Commission, thank you very much for the honor of testifying before you today. I ask that my full written testimony be admitted into the record.

I will begin with an overview of the relevant human rights framework that obligates the United States at federal, state and local levels. I will then address three topics: U.S. human rights obligations related to safety of journalists, especially during public protests; Trump administration pressure on the U.S. Agency for Global Media; and the role of independent journalism during the COVID-19 pandemic. I will conclude by considering how these issues may fit into a broader approach to American human rights policy, fittingly focused around this hearing's theme, "human rights at home."

The Human Rights Framework and Threats to Independent Media

In 1992, at the request of then-President George H.W. Bush, the Senate provided advice and consent to U.S. ratification of the International Covenant on Civil and Political Rights ("ICCPR").¹ 173 States are now parties to the ICCPR, making it one of the most widely ratified treaties. In transmitting the ICCPR to the Senate for ratification, President Bush said that, apart from a handful of issues resulting in declarations or reservations, the treaty is "entirely consonant with the fundamental principles incorporated in our own Bill of Rights."²

The United Nations (UN) and States Parties to the ICCPR have multiple tools to monitor and assess compliance with the treaty. One of those is the Special Procedures of the UN Human Rights Council, the over fifty "mandates" according to which special rapporteurs and working groups gather information, monitor and report on particular areas and countries of human rights concern. In 2014, the Human Rights Council appointed me Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression.³ Like other mandate-holders, I communicate regularly with governments, conduct official country missions, and prepare annual thematic reports for the Council and the General Assembly. (Of relevance to the Commission, I also work closely with the Representative of the OSCE on the Freedom of the Media and have been extremely disappointed to see that position's reappointment blocked recently by Tajikistan and Azerbaijan.)

The United States was instrumental in helping establish the mandate on freedom of opinion and expression in 1993, and until the Trump Administration withdrew from its elected seat on the Council in 2018, it had been an active governmental voice there in favor of press freedom. U.S. support for a free press is in keeping with the

¹ *International Covenant on Civil and Political Rights*, available at <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

² S. EXEC. COMM. REP., 102D CONG., S. COMM. ON FOREIGN RELATIONS REP. ON INT'L LAW, APP. A, TRANSMITTAL LETTER FROM PRESIDENT GEORGE BUSH (Aug. 8, 1991) (1992), reprinted in 31 I.L.M. 645, 660

³ See generally <https://www.ohchr.org/EN/Issues/FreedomOpinion/Pages/OpinionIndex.aspx>.

central role of the First Amendment in American social, cultural, economic, legal and political life. But in the context of UN or OSCE engagements, or engagements in any other international forum, the U.S. Constitution is less salient than U.S. obligations under international law. And it is those obligations that frame my work as Special Rapporteur.

The legal framework for the international protection of press freedom may be found in Article 19 of the ICCPR, which guarantees everyone’s right to “seek, receive and impart information and ideas of all kinds, regardless of frontiers” and through any media. Any restrictions of those guarantees must meet strict standards of legality, necessity, and legitimacy. An extensive jurisprudence, reinforced by decisions in regional human rights courts worldwide, confirms that Article 19 both *precludes* States from interfering with free expression rights and *obligates* States to ensure an enabling environment for expression, independent media and access to information. The ICCPR also guarantees non-discrimination and remedies for violations.

The human rights guarantee of freedom of expression recognizes a special place for those who practice journalism and for the outlets that publish them. In language that echoes long-held American values concerning an independent press, the Human Rights Committee, the official monitoring body for the ICCPR, has noted that “[a] free, uncensored and unhindered press or other media is essential in any society to ensure freedom of opinion and expression” and “constitutes one of the cornerstones of a democratic society.”⁴ This implies, the Committee continued, a press that is “able to comment on public issues without censorship or restraint and to inform public opinion.”⁵ Critically, the protection of journalists does not accrue solely to the benefit of individual reporters and outlets. “The public,” the Human Rights Committee emphasized, “has a corresponding right to receive media output.”⁶ These values, it is well understood, apply to offline and online expression.

Numerous human rights bodies have emphasized that journalists, exercising their Article 19 rights, must – in the words of two monitoring mechanisms – be given the “highest degree of protection” necessary to cover public demonstrations, a protection “not limited to granting specific protective measures to journalists; it also includes the duty to create the necessary conditions to mitigate the risks of practicing their profession in such situations.”⁷ The UN General Assembly has “unequivocally” condemned all attacks on journalists and specifically called upon States to “pay attention to the safety of journalists covering events in which persons are exercising their rights to peaceful assembly and freedom of expression, taking into account their specific role, exposure and vulnerability.”⁸ One key UN report on the management of public protest emphasized that all persons, including journalists, enjoy the right to monitor demonstrations, which includes “the active collection, verification and immediate use of information to address human rights problems.” Governments also owe a duty to protect “the right to record the law enforcement operation” attendant to public demonstrations.⁹

From the perspective of international human rights mechanisms, much of the attention to journalist protection has focused on governments *other than* the United States. In my own role, on the basis of Article 19 and similar

⁴ Human Rights Committee, *General Comment No. 34: Freedoms of opinion and expression*, UN Doc. CCPR/C/GC/34, September 12, 2011, para. 13, available at <https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>.

⁵ *Id.*

⁶ *Id.*

⁷ *Joint declaration on violence against journalists and media workers in the context of protests*, Special Rapporteurs of the United Nations and Inter-American Commission on Human Rights, September 13, 2013, available at <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=951&IID=1>.

⁸ UN General Assembly Resolution 175, January 29, 2018, UN Doc. A/RES/72/175, paras. 1 and 7, available at https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/72/175.

⁹ Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, A/HRC/31/66, paras 68 – 71, February 4, 2016, available at <https://undocs.org/A/HRC/31/66>.

standards in other treaties, I have communicated with Governments for the past six years, sending over 1400 diplomatic letters highlighting a range of violations of freedom of expression.

That focus beyond the United States has changed. Beginning in 2017, the focus on press protection has necessarily expanded to include serious concerns about the United States. In particular, President Trump's denigration of the media and promotion of disinformation has rightly been seen worldwide as a threat to independent journalism, both a tactical and strategic threat to the freedom of expression.¹⁰ The recent protests have exposed how poor respect for the role of the press in democratic society, combined with the militarization of policing and systemic racism within law enforcement and other public institutions, has undermined the ability of the press to cover issues of the highest public interest in the United States.

It is in this context, highlighting the human rights framework, that I evaluate the specific questions that are the subject of this hearing.

Protection of journalists during public protests

The Black Lives Matter protests that have swept the country since the police murder of George Floyd in Minneapolis on May 25 have involved repeated interference with the right of reporters to cover those protests and, thus, the right of the public to receive information about them. As I am sure you will hear from my co-panelists, the Committee to Protect Journalists and the Freedom of the Press Foundation have documented over five hundred reported incidents of interference with press freedom in the context of the protests. Interference has included physical attack, including the targeting of journalists with tear gas and other forceful measures, equipment seizures or destruction, arbitrary detention, criminal charges, and other forms of intimidation.¹¹

The attacks on journalists are alarming and manifestly incompatible with the United States' commitment to a free press. During the first weeks of the protests, my counterpart in the Inter-American human rights system, Edison Lanza, and I issued a statement that law enforcement has a "duty to ensure the safety of journalists who are covering protests . . ." Special Rapporteur Lanza and I noted three aspects of U.S. policing and harassment of the press that deserve urgent modification:

- *Duty to avoid use of force against journalists and protect journalists from third-party violence.* The use of force against journalists may have either tactical or strategic objectives. From the perspective of law enforcement, it may involve 'getting reporters out of the way' as they seek to confront protesters. It may have a more strategic objective of hiding from the public the nature of law enforcement's repression of public protest.¹² Either way, public authorities at all levels of government owe journalists protection in order to enable them to do their work freely. This is a duty "to avoid the use or threat of force against journalists and to protect journalists against third party violence." Indeed, the "targeting of media workers with lethal or less-lethal force for doing their work is prohibited under international human rights law and contrary to best policing standards." Not only must law enforcement act according to U.S. obligations, but those in violation must face disciplinary or accountability processes.
- *Role of public authorities condemning attacks on journalists.* While police themselves must abide by international standards and protect reporters, public officials – especially those holding high office – should reinforce these protections and condemn attacks against journalists and promote the role played by

¹⁰ See Statement of Special Rapporteurs for the United Nations and Inter-American Commission for Human Rights, *Trump attacks on media violate basic norms of press freedom, human rights experts say*, August 2, 2018, available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23425&LangID=E>.

¹¹ See Committee to Protect Journalists, *Press Freedom in Crisis*, available at <https://pressfreedomtracker.us/george-floyd-protests/>.

¹² See Office of the High Commissioner for Human Rights, *UN experts condemn crackdown on peaceful protests and highlight calls to overhaul policing*, June 10, 2020, available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25948&LangID=E>.

the press. President Trump has exacerbated the situation, not only with his years-long attack on the media as an ‘enemy of the people’ but his evident lack of understanding of the guarantees journalists and protesters enjoy in a democratic society. The rhetoric of denigration contributes to an environment of hostility and intolerance within which attacks on journalists, by the police or third parties, may be promoted.

- *Concerns with the militarization of policing.* The evident militarization of policing in the United States has had a deeply deleterious effect on the relationship between law enforcement and protesters and journalists. The images of recent weeks convey an atmosphere less of the police creating space for public protest and the exercise of fundamental rights and more of a zone of armed conflict. That image discourages individuals from exercising their rights, encouraging self-censorship and avoidance of protests, and thus interferes with the right to peaceful assembly. It also limits the ability of the press to cover protests. It encourages law enforcement to see protesters and journalists as belligerents, highlighting the need for the demilitarization of policing and a reliance on international standards for the management of protests.¹³

The attacks on the press during protests are not only inconsistent with U.S. obligations but also inconsistent with what the United States has demanded of other governments. In 2018, the State Department condemned the arbitrary detention of journalists covering the protests in Sudan.¹⁴ The 2019 State Department Human Rights Report condemns attacks on journalists in places as varied as Belarus, Argentina and Hong Kong.¹⁵ In the previous administration, a typical example involved the U.S. condemnation of the assault on journalists during protests and rallies in Ukraine in 2013.¹⁶

The assault on the independence of the U.S. Agency for Global Media

In June, the new director of the U.S. Agency for Global Media dismissed the heads of three major independent reporting agencies that are part of the U.S. Government – Middle East Broadcasting, Radio Free Asia, Radio Free Europe/Radio Liberty – and the Open Technology Fund (OTF), the Government’s leading agency for the promotion of global internet freedom.¹⁷ It is difficult to see these firings as anything other than an attempt to undermine the independence of these agencies and to bring them under the influence of a political approach to the media. Each of these agencies has earned respect worldwide for their independence and their support for local voices; the moves by the new leadership emptied out that well of goodwill.

The assault on OTF involved not only the firing of its CEO but also the removal of its independent and bipartisan board. OTF’s role in the global effort for internet freedom and human rights cannot be overstated. It has supported projects enabling billions of people worldwide to access the internet in the face of their own governments’ censorship and surveillance. OTF helped fund projects providing anonymity and digital security for those seeking to exercise their fundamental freedom of expression rights online. OTF supported open source technology – that is, technology that would be made available to all individuals without cost. However, with the new leadership, OTF risks being transformed into yet another politicized agency promoting *closed-source* and proprietary technologies that would undermine the ability of the United States to support internet freedom globally.

¹³ See Office of the High Commissioner for Human Rights, *UN and OAS experts condemn use of force against journalists covering protests*, June 10, 2020, available at <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25946&LangID=E>.

¹⁴ See VOA News, *US Condemns Sudan’s Arbitrary Detention of Journalists*, January 20, 2018, available at <https://www.voanews.com/africa/us-condemns-sudans-arbitrary-detention-journalists>.

¹⁵ State Department, *Country Reports on Human Rights Practices: 2019*, available at <https://www.state.gov/report/custom/f0554ccfd1/>.

¹⁶ Al Jazeera American, *US condemns 'disturbing' beating of Ukraine opposition journalist*, December 26, 2013, available at <http://america.aljazeera.com/articles/2013/12/26/us-condemns-disturbingbeatingofukraineoppositionjournalist.html>.

¹⁷ See Jennifer Hansler and Brian Stelter, *'Wednesday night massacre' as Trump appointee takes over at global media agency*, CNN Business, June 18, 2020, available at <https://www.cnn.com/2020/06/17/media/us-agency-for-global-media-michael-pack/index.html>.

In recent weeks, thousands of individuals and hundreds of civil society organizations have urged Congress to take a number of steps to protect and promote online freedom. Those steps would include honoring the 2019 and 2020 fiscal year funding for OTF; requiring an open, transparent, fact-based and competitive process for the awarding of OTF funds; a commitment to funding only open source technologies; regular security audits; and the adoption of the Open Technology Fund Authorization Act. I fully share the concerns reflected in a letter crafted by civil society and urge the Commission to support the calls therein.¹⁸

The historic U.S. role as a supporter of the online freedom of expression, especially its role in fostering global internet freedom, will be difficult if not impossible to maintain without an active program such as that embodied by OTF and a demonstrably independent global news operation.

The impact of COVID-19 on journalism

The pandemic is having an extraordinary impact on journalism worldwide. It has led governments to limit the availability of press briefings and access to officials. It has inspired some governments to adopt so-called fake news laws to limit reporting on COVID-19, whether for the purpose of addressing the possibility of panic or, more nefariously, limiting criticism of government responses to the pandemic. Even apart from government responses, the economic damage caused by the pandemic has also directly harmed numerous news outlets worldwide, causing many to fire journalists, limit their freelance opportunities, and often even close. While this is deeply problematic for the availability of information during the pandemic, it is also important to note that many journalists lack access to social protection mechanisms, and so the loss of a job – particularly in the United States – implicates other sorts of welfare and health benefits.

In my final official report to the Human Rights Council, which I presented just weeks ago, I highlighted four recommendations to meet the challenges posed by COVID-19 for freedom of expression.¹⁹ They include the following, which I believe are relevant globally and to the United States:

- First, it is critical for governments to improve or reinforce their programs for access to information. That means sharing as much information as possible about the course of the disease and the tools people should use in order to protect themselves and their communities.
- Second, Governments must not only end the practice of internet shutdowns, but they should make it a priority to ensure that all have internet access.
- Third, threats to the media have unconscionably continued during the pandemic, including intimidation of journalists, attacks on reporters, restrictions of space for reporting, lack of access for foreign reporters, and the arbitrary detention of journalists. Governments must refrain from these attacks on the media and release all journalists detained, whether during or prior to the pandemic, especially given the enormous health risks.
- Fourth, governments may be tempted to treat disinformation with harsh measures given the harm the so-called *infodemic* can have on public health. Penalties, however, tend to have a chilling effect; while sanctions may help address some disinformation, they also limit the willingness of people to share helpful information – and they are often subject to abuse. It is also critical to work with social media companies, where so much disinformation takes place, to ensure that they are transparent enough for your governments to take meaningful steps to promote and protect public health.

¹⁸ See *Letter to Congress concerning the Open Technology Fund*, available at <https://saveinternetfreedom.tech/>.

¹⁹ Report of the Special Rapporteur: Disease pandemics and the freedom of opinion and expression, A/HRC/44/49, April 23, 2020, available at <https://undocs.org/A/HRC/44/49>.

I would only add to these recommendations one further point about disinformation. Governments, including the U.S. Government, have also been active purveyors of disinformation during the pandemic, whether about the cause of the disease, the available treatments, or the spread of the outbreak. Much as governments should not criminalize disinformation, they also should not, as a global Joint Declaration noted in 2017, “make, sponsor, encourage or further disseminate statements which they know or reasonably should know to be false (disinformation) or which demonstrate a reckless disregard for verifiable information (propaganda).” Indeed, they should “take care to ensure that they disseminate reliable and trustworthy information, including about matters of public interest, such as the economy, public health, security and the environment.²⁰

Concluding remarks

It is encouraging that this Commission is addressing human rights not merely as a question of how others behave. International human rights law also, as you recognize, concerns obligations that the United States has freely taken on by ratifying the ICCPR (and, notably, the International Convention on the Elimination of All Forms of Racial Discrimination).²¹ Historically, the United States has avoided seeing human rights as a tool of domestic governance and accountability, a historical legacy of racism and segregation in this country.²²

The United States has an opportunity to do two things at once: to apply human rights frameworks to domestic governance, in the context of policing but also other aspects of public life, and to engage with the international community in a way that recognizes that human rights obligations are just as important to our domestic as to our foreign policy. A human rights policy with domestic and foreign policy components would advance protection at home and leadership abroad.

What does that approach look like? At a minimum, it involves the following:

- The establishment of a national human rights commission, according to the international standards for such independent bodies.²³
- Implementation of human rights treaties as a matter of U.S. law, providing for federal causes of action that arise under ratified treaties and, at the state and local level, opportunities to review government action according to human rights standards.
- Ratification of treaties that the United States has so far refused, particularly those related to discrimination against women, children’s rights, migrants’ rights, and the rights of persons with disabilities, most if not all of which are already consistent with U.S. law.
- Specifically, ratification of the International Covenant on Economic, Social and Cultural Rights²⁴ and adoption, as part of a human rights agenda, of policies to protect against the unfairness, extreme poverty, and inhumane treatment caused by corruption, concentrations of unimaginable wealth, and capture of political processes at home and overseas.

²⁰ See *Joint Declaration on Freedom of Expression and “Fake News”, Disinformation and Propaganda*, Paragraph 2 (c) and (d), March 3, 2017, available at <https://www.ohchr.org/Documents/Issues/Expression/JointDeclaration3March2017.doc>.

²¹ See *International Convention on the Elimination of All Forms of Racial Discrimination*, available at <https://www.ohchr.org/en/professionalinterest/pages/cerd.aspx>.

²² See David Kaye, *America the Unexceptional*, FOREIGN POLICY, June 10, 2020, available at <https://foreignpolicy.com/2020/06/10/american-exceptionalism-human-rights-democracy-unexceptional/>.

²³ See Paris Principles, available at <https://nhri.ohchr.org/EN/AboutUs/Pages/ParisPrinciples.aspx>.

²⁴ *International Covenant on Economic, Social and Cultural Rights*, available at <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>.

- Finally, a return to the institutions of global human rights. At a minimum, that would involve returning to the Human Rights Council as a candidate for membership, but it should also involve a reconsideration of the resistance to global monitoring of U.S. human rights behavior. Such moves would signal to all countries, democratic and authoritarian, friendly and hostile, that the United States will return to global leadership and will no longer approach human rights as a double-standard.

Thank you very much for your invitation and consideration. I look forward to answering any questions you might have, whether during this hearing or thereafter.