

THE USE OF SANCTIONS TO PROTECT JOURNALISTS
By Amal Clooney

Chatham House, 13 February 2020

Good afternoon everyone. It is a pleasure to be here with such eminent colleagues as well as my brave client, Maria, who faces every day the challenges that we are here to discuss. Maria currently faces over 80 years in prison though her only crime is being a journalist and speaking the truth. The first of 7 cases pending against her will conclude in the coming weeks and could lead to her immediate imprisonment. All because of an article published on Maria's news site that said a Filipino judge used a car that was registered to an alleged drug dealer. This, according to the authorities, constituted the crime of 'cyberlibel' – even though Maria did not write the article and cyberlibel was not a crime at the time the article was published. None of the other charges against her are any more convincing, but together they expose her to a lifetime behind bars.

As many of you know, what is happening to Maria is emblematic of a global trend. Last year, I defended two Reuters journalists imprisoned on spurious charges in Myanmar. In this extraordinary case, their jailer, Aung San Suu Kyi, was a former political prisoner held in the same prison as them decades earlier. And yet it took 16 months to secure their release after they were imprisoned for the 'crime' of exposing the army's brutality against Rohingya victims of genocide. In the past

year, my Foundation's TrialWatch initiative has monitored prosecutions of radio broadcasters charged with 'espionage' for reporting from Cambodia; a journalist imprisoned for tweeting a call for revolution in Nigeria; and an opposition-affiliated journalist prosecuted for the crime of having an abortion in Morocco. In the last few weeks, we have learned that a journalist was charged with crimes against the state, for reporting on the coronavirus in Malaysia; former Guardian journalist Glenn Greenwald was charged with 'cybercrimes' after criticising the Bolsonaro regime in Brazil; and that Saudi officials hacked the phone of the owner of the Washington Post, whose reporter Jamal Khashoggi was tortured to death.

The list goes on. And this is happening all over the world. In the last two years, more than 130 journalists have been killed and over 300 imprisoned 'for their work'. Freedom House reports that over the past decade the most repressive regimes are becoming *more* repressive, while 'free' countries have regressed. And even leading democracies with strong traditions of protecting free speech are in some cases clamping down on those who investigate and publish sensitive stories.

Many of you here are aware of this global gag on speech – and some, like Maria, are its victims. So, what can be done? As Special Envoy on Media Freedom, I worked with Lord Neuberger to convene a panel of experts from all over the world who would come together to generate ideas. If world leaders are becoming more united, more determined, more innovative in finding ways to *silence* the press,

shouldn't *defenders* of the press, do the same? If international human rights are supposed to provide some minimum protection for all people, how can we make them more relevant? The Panel's work is based on two guiding principles:

- First, if international legal rules are to inspire and constrain the conduct of states, they need to be *clear and accessible*. So over the course of the year, we will publish reports setting out the international free-speech standards that apply to laws criminalising sedition, 'fake news', hate speech, espionage, and other laws used to clamp down on journalists.
- Second, if international standards are to protect journalists in the real world, they need to be more consistently *enforced*. Currently, enforcement is highly discretionary and selective. States that purport to champion media freedom often do so only if there is public pressure, safety in numbers, and a negligible impact on diplomatic relationships or trade. This record-sheet could be improved if states made concrete commitments when it comes to five specific enforcement mechanisms: imposing sanctions on those who repress the media; issuing visas to journalists at risk; providing consular assistance to journalists arrested abroad; supporting a global system for reporting on journalists' arrests and trials; and creating a mechanism for international investigations of persistent or egregious attacks on the press.

Today we are launching the first Panel report with our recommendations on the use of sanctions to protect journalists. It makes the case that sanctions can be a valuable tool in enforcing human rights, and that they should be used to protect the right to a free press.

The sanctions we are talking about are *targeted sanctions*. Not sanctions against an entire country, but the *freezing of assets* and the *denial of visas* to individuals responsible for human rights abuse. Such sanctions can be imposed by an individual state or a group of states acting together. But they do not need to go through the UN: meaning that if the Security Council is at an impasse – as it has been on so many critical issues – there is still the potential to act.

Sanctions are a way to not only ‘name and shame’, but also to impose a cost on certain behaviour and in doing so deter its repetition. As a fellow barrister has put it: ‘[i]f all advanced democracies, with desired banks, schools and hospitals’, used sanctions against human rights abusers, ‘the pleasures available to the cruel and ... corrupt would be considerably diminished. They will not be ... in prison, but they will not be able to spend their profits ... where they wish, nor travel the world with impunity. They may then come to recognise that violating human rights is a game not worth the candle’.

I have seen in my own work as a human rights lawyer how useful such sanctions can be. Often the *spectre* of their potential use is a game-changer, with a state paying closer attention to a case and in some instances being much more willing to *resolve* it once potential sanctions are on the table. And yet this tool is hardly ever used to protect journalists and free speech around the world.

So far only a handful of states – including the US, the UK and Canada – have laws that allow sanctions to be imposed against human rights abusers globally, and (with limited exception) only the US and Canada have used them to date. Our view is that these countries have set a positive example. So our first recommendation is that the EU as well as leading governments that champion human rights, but act as a banking centre and playground for targets, should adopt such laws. And we believe that the UK should operationalise its global human rights sanctions regime as soon as possible.

We also provide recommendations on how sanctions regimes should be designed to maximise their ability to protect journalists and advance human rights. We propose that sanctions should be permissible whenever sufficiently serious human rights abuses are committed. That sanctions should apply not only when journalists are killed or tortured, but also when they are locked up on false pretences, or when the media is silenced through shutdowns of news sites or the internet. And we recommend that, where appropriate, the sanctions net should catch *companies* as

well as individuals; *terrorist groups* as well as government officials; *and* the network of collaborators who facilitate their crimes.

Other recommendations seek to limit the extent to which sanctions powers can be misused. So, in addition to stressing the need for appropriate due process protections, we recommend mechanisms that will help to apply sanctions on a broad and objective basis. For example, the Panel believes that a non-governmental expert committee responsible for recommending targets and coordinating evidence could improve the process and create space for governments to impose sanctions, even against nationals of friendly states.

I look forward to discussing these recommendations with you today, particularly those of you here who are journalists. I took up my role on this legal Panel because I thought there was an opportunity to make a difference to your ability to do your job without fear of persecution. The Panel's body of work is based on consultations with media lawyers, judges, academics and journalists about what we can most helpfully deliver. Over the coming year, we will work hard to produce solid advice and recommendations. But we cannot change laws. And we cannot make policy. So the question of whether journalists, like Maria, can do their work, can be free from arrest, and be safe from harm will *depend on what governments will decide* to do next. Not just governments like her own that are at war with the media, but also those that claim they are not. Thank you.