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Abstract

Definitions of impunity regarding crimes against journalists have thus far been too narrow. Therefore we propose a new approach to understanding impunity as also being grounded in journalists' lived reality and perceptions to better understand the complexity and breadth of impunity. It is based on the findings obtained through a set of semi-structured interviews with 40 editors and senior journalists in five countries and expressed in a new typology of impunity. We argue that what we call the 'Politics of Impunity' is a policy of governance whereby impunity is used as a political tool by the state and state-sponsored actors to achieve journalistic self-censorship. This is done through the deliberate deprivation of private autonomy brought about by the enforced exile of journalists into a 'space of exception' where they are both within and beyond the law. The exercise of the 'Politics of Impunity' in an increasing number of states creates an environment that only allows for politically compliant journalism.

7995 words

The Politics of Impunity: a study of journalists' experiential accounts of impunity in Bulgaria, Democratic Republic of Congo, India, Mexico and Pakistan

Impunity is a widespread global problem. It can be understood as human rights violations that are committed or condoned by agents of the state¹ and remain without any legal consequences for the perpetrator. According to the Committee to Protect Journalists (CPJ) (2017) 1249 journalists have been murdered since 1992 with an impunity rate of over 90% (also UNESCO 2016). Impunity and press freedom are generally understood as something that can be measured – and to some extent they can. Quantitative studies are typically undertaken by international organisations such as CPJ, the Council of Europe (CoE), UNESCO and Reporters without Borders (RWB) who have created various statistical tools which quantify and numerically profile five main areas: (1) the extent of impunity on an international level including fatality and casualty figures; (2) assessment of the kind of news stories that are considered the most dangerous for journalists to report; (3) monitoring executions via the use of UNESCO's media development indicators and safety trends indicators; (4) freedom indicators which monitor and rank countries via media freedom indices²; (5) measurement of national political stability and fragility against Western political, social and economic benchmarks³. Such statistics have been an invaluable tool for international organisations, NGOs and academics –

¹ Human Rights in China (2004).

² Such as the RWB Press Freedom Index and the Freedom House Press Freedom reports.

³ For example the Fragile States Index and the World Bank's Worldwide Governance Indicators.

especially those who focus on journalism safety and the problem of impunity as regards the intimidation of, attacks on and killings of journalists (e.g. Alley, 2010; Estévez, 2010; Rely and de Bustamante, 2017; Trotti, 1999). It has widely been acknowledged that crimes committed with impunity against journalists extend beyond 'censorship by bullet' (Harrison and Horsley, 2013) to include physical and psychological attacks such as harassment and intimidation, abduction, arbitrary detention, enforced disappearance, expulsion, illegal surveillance, torture, sexual violence against women journalists as well as unethical (and not necessarily illegal) means such as the starving of non-compliant journalism of the funds it needs to operate and the undue influencing of editorial choices. Some studies have examined the subjective impact of these forms of violence on journalists through a psychological approach engaging with journalists' perceptions of fear and risk and, related to this, of journalists' personal experience of victimisation (Arsan, 2013; Clark and Grech, 2017; Kenny and Gross, 2008). Others have analysed the links between the extent to which journalists can expect threats and intimidation and the occurrence of self-censorship (Amin, 2002; Jha, 2009; Germano and Meier, 2010; Tapsell, 2012). Self-censorship, in turn, is best defined as those journalistic 'practices which are performed for the sake of excluding information from publicity due to felt threats by public authorities' (Skjerdal 2010: 99) and as manifesting itself in the form of 'a set of editorial actions ranging from omission, dilution, distortion, change of emphasis, to choice of rhetorical devices by journalists, their organisations, and even the entire media community in anticipation of currying reward and avoiding punishment from the power structure' (Lee and Lin, 2006: 333 following Lee, 1998).⁴

All of these approaches have provided valuable insights but we argue that what has been missing from scholarship so far is an approach to understanding impunity in terms of its legal, political and civil effects on journalists. We therefore propose a new approach, which we call the 'Politics of Impunity'. It is based on the findings of an exploratory study consisting of a set of semi-structured interviews with editors and senior journalists in five countries. It examined how impunity is defined and experienced by journalists and revealed that impunity deprives journalists of their private autonomy and exiles them into spaces of exception. The former has been well understood (see Cooke, 1999 and Young, 2017) and following Locke and Habermas (1996) we define private autonomy as a legally protected sphere within which 'individuals are free to pursue their interests and happiness as they see fit (...)⁵ and modern law must secure the recognition of private autonomy that is, it must guarantee the exercise of, to use Locke's phrase, the 'inalienable rights' of those

⁴ In some cultures, self-censorship viewed as a desirable (and responsible) behaviour (Amin, 2002; Simons and Strovsky, 2006).

⁵ Habermas's position summarised by Bohman and Rehg (2014).

subject to it.⁶ The latter, spaces of exception, is derived from Schmitt's (2005) and Agamben's (2005) use of the phrase 'States of Exception', and in general terms, refers to the suspension of the legal order and political procedures by the state due to exceptional circumstances. We use 'Spaces of Exception' to refer to a sphere of activity in which the norms of legal procedure and politically underwritten forms of personal security are suspended with impunity. It does not refer to geo-political territory (as in Gregory, 2004) rather it is a form of existential and affective space. Spaces of exception occur when those who are in a position of political power and decide to no longer legally protect legal and political spaces of individual freedoms and to no longer guarantee the safe exercise of individual rights for certain groups of people then they exclude them from the political community they belong to. They strip them of their equal citizenship and effectively force them to inhabit a 'space of exception' where the law no longer applies and political and civil membership is forfeited. Following Gregory (2004: cf.62/63), a space of exception is in effect a space where journalists (in this case country nationals) are still objects of sovereign (state) power, but where they are excluded from being its subjects.⁷

Using these two key-concepts combined with the concept of self-censorship we define the 'Politics of Impunity' as a policy of governance whereby impunity is used as a political tool by the state and state-sponsored actors to achieve journalistic self-censorship. This is done through the deliberate deprivation of private autonomy brought about by the enforced exile of journalists into a 'space of exception'. Ultimately, the 'Politics of Impunity' undermines journalism as a civil institution.⁸

The study

In order to examine how impunity is defined and experienced by journalists themselves we undertook an exploratory study based on interviews with news editors and senior journalists from both regional and national print⁹ news organisations in five countries. As regards, the interviewees, we decided to a) only interview editors and senior journalists due to their longer experience as journalists and because of their responsibility to their own staff meaning that they are likely to have a greater knowledge of the extent of impunity and its sponsors and b) to select an equal number of both regional and national news organisations in each country

⁶ We subsume journalists under the legal protection of individual's right as they are considered citizens and legally defined as such.

⁷ Obviously this only applies to regional and national journalists operating within the domains of their 'own sovereign state'.

⁸ On the importance of journalism as a civil institution see Alexander (2006, 2016) and Harrison (forthcoming).

⁹ We focused on print news organisations on the assumption that broadcast news is more likely to be state-controlled than print.

to account for differences in the experience of impunity on those two levels.¹⁰ In total, forty one-hour in-depth semi-structured interviews were conducted between November 2015 and February 2016 with questions focusing, as noted above, on editors' and senior journalists' experiential accounts of impunity. More specifically we asked the interviewees about the challenges in their daily journalistic work, what they considered the main challenges to media freedom, how they experienced impunity and what impact impunity had on their daily lives and all those interviewed had significant experience of reporting. The majority of interviews were conducted in locations secured by the research assistants to ensure privacy and safety (except for Bulgaria where they were conducted via Skype and telephone from the UK) and in the country's language. All interviews were audio-recorded, transcribed and translated. A thematic analysis of the interview data was undertaken. Due to the sensitive nature of this research and the interviewees' responses as well as concerns about their own safety, all interviewees signed a consent form and requested complete anonymity and asked that the news organisations themselves not be identifiable. Accordingly, we refer to the interviewees by country (B, DRC, I, M, P) and indicate the interview number as well as whether it was a regional or national news organization. What we can't indicate for safety reasons is whether it was an editor or a senior journalist so we just used (J). So for example, MJ1N means Mexico, interview no 1 with an editor/senior journalist, national news organisation (N).

With regard to the five countries, Bulgaria (B), Democratic Republic of Congo (DRC), India (I), Mexico (M) and Pakistan (P) were chosen because they each a) have a constitutional/ legal framework that explicitly protects freedom of expression and freedom of the press but nevertheless rank low on press freedom levels and considered to have an either partly free or not free press; b) face different types of attacks undertaken with impunity, ranging from murder, arbitrary deprivation of liberty, harassment and a wide variety of threats both online and offline, intimidation of family members and the exercise of financial sanctions and because (c) we could get access via our research networks to appropriate interviewees. **In other words, it was in some ways also a convenience sample.** More specifically, Bulgaria is currently ranked 109th on the RWB World Press Freedom Index (WPF) 2017 and faces challenges of ownership concentration in the media landscape (80% of the print media are owned by conglomerates) and a corresponding lack of media pluralism and journalistic independence from both media owners and the government (including regional authorities). The Commission for Financial Supervision has recently come under sharp critique for imposing fines on media companies and for pressuring journalists to reveal their sources. DRC can be

¹⁰ No significant differences were found other than that there was a consensus that journalists working at the regional level were more at risk and less protected than those at national level.

considered a fragile state. It ranks 8th out of 178 countries on the Fragility Index, 176th place in the Human Development Index (HDI) 2015¹¹ and 154th on the WPI because 'Journalists are exposed to threats, physical violence, arrest, prolonged detention and even murder. The main perpetrators – the army, police and security services – enjoy complete impunity'¹². Press freedom is further 'significantly restricted through criminal defamation and libel laws as well as threats, detentions, arbitrary arrests, and attacks against journalists' – the latter being carried out also by the police force.¹³ Although 'the Indian news press enjoys two-fold protection, namely the freedom of speech and expression guaranteed under Article 19(1) (a) and the freedom to engage in any profession, occupation, trade, industry or business, guaranteed under Article 19(1) (g)' Mathai (2013), India was ranked 136th on the WPI because of wide-spread journalist attacks, editorial interference by media owners, legal challenges, surveillance and restriction of access to information.¹⁴ India was also ranked 14th on the 2016 Impunity Index.¹⁵ According to RWB 'government has made no provision for the creation of a special unit to combat impunity for crimes of violence against journalists, although there was an attack against a journalist every three days in 2014, according to the National Crime Records Bureau'¹⁶. Mexico was ranked 107th on the Fragility Index and 8th on the Impunity Index¹⁷ being characterised as a country with 'Organized crime, corrupt government officials, and a justice system incapable of prosecuting criminals all contribute to reporters' extreme vulnerability'. Ranked 147th in 2017, Mexico is one of the most dangerous and deadliest countries for journalists in Latin America. According to Article 19, attacks on journalists have been in the increase with 779 registered between 2009 and 2012 and 1,053 between 2013 and 2015.¹⁸ Pakistan was ranked 9th on the 2016 Impunity Index¹⁹, 14th on the 2016 Fragility Index and 139th on the WPI. RWB notes that journalists are 'targeted by extremist groups, Islamist organizations, and the feared intelligence agencies [but that] the various warring groups are always ready to denounce acts of "sacrilege" by the media. Government officials, political parties, and party activists are also quick to harass, threaten, or physically attack journalists regarded as unsympathetic to their views. Inevitably, self-censorship is on the rise within news organizations'.²⁰ Accordingly, 'journalists remain quite vulnerable as the government has yet to find workable

¹¹ United Nations Development Programme (2016).

¹² RWB (2016a), also Freedom House (2017b).

¹³ Freedom House (2017a).

¹⁴ See Freedom House (2017d).

¹⁵ CPJ (2015).

¹⁶ Ibid.

¹⁷ CPJ(2015).

¹⁸ See Carmona (2016).

¹⁹ CPJ(2015).

²⁰RWB (2016c).

mechanisms to ensure their safety in the country'.²¹ Attacks, violence against and attempted murders of journalists remain frequent with impunity being the norm for these actions against journalists.²²

Findings

The forty interviewees gave valuable insights into the experiences of undertaking journalism in a climate of impunity. Although they came from five different countries and were confronted with different types of attacks and worked in different institutional and political circumstances, significantly they all had experienced and expressed the effects of impunity in remarkably similar ways. Although based on a relatively small sample, this indicates that there is something universal to journalists' understanding and experience of impunity. One caveat needs to be noted and that is that these perceptions might sometimes be generalisations. It is important to accept these as they are valuable insights into how impunity is felt i.e. as overwhelming, as omnipresent and as beyond hope. Accordingly, we haven't adjusted them but taken them in some ways at 'face-value'. **It is the case that many international and national initiatives to combat the issue of impunity and ameliorate journalists' safety haven't been mentioned. This doesn't mean they don't exist or aren't valuable but merely that they haven't become part of their experiential accounts. The journalists' perceptions are best described via seven main themes which combined form a new typology of impunity based on journalists' perceptions and experiences:** (1) a lack of protection from the government, media houses and the police and concomitantly a feeling of helplessness; (2) a lack of solidarity amongst journalists and an attendant feeling of isolation; (3) continuous direct and indirect threats from government and state-sponsored actors and a feeling of fear; (4) lack of interest by the public and disbelief in daily crimes and threats against journalists; (5) no legal redress and the feeling of a 'dead-end situation'; (6) inability to undertake independent journalism and the feeling of loss of professionalism; (7) inevitability and inescapability of self-censorship. Of course, in reality some of these themes overlap. However, these analytical distinctions are a heuristic device to ensure greater clarity in laying bare features and daily effects of impunity. The findings are best presented by theme and we provide a short summary for each theme before giving some insights and quotes from our interviewees from each country. These insights and quotes are non-exhaustive but are designed to illustrate and evidence the themes we have detected.

(1) Perceptions of a lack of protection from the government, media houses and the police and concomitantly a feeling of helplessness

²¹ Centre for International Media Assistance (2016) and Galhotra (2016).

²² See Freedom House (2017c).

The interviewees all find themselves in situations where impunity is endorsed, that is either actively employed or passively tolerated, by the government and state-actors including the police. In other words, the government and the police which should both represent and defend the legal order are in fact continuously undermining it. The helplessness of journalists is further exacerbated in cases where their own employers; that is the media houses themselves, refrain from granting protection thereby sometimes putting their journalists at risk and failing to protect journalists and journalism. All of the Bulgarian journalists expressed the view that they don't feel protected by the government or the police from the wide range of attacks on independent journalism. In the Democratic Republic of Congo, it was said that journalists that have been attacked or are continuously threatened feel discouraged (DRCJ1N) because they aren't protected as citizens by the authorities or by the law (DRCJ2N). The Indian government was described as being the most serious constraint on press freedom as it uses impunity as a tool to constrain independent journalism and to make self-censorship necessary especially when reporting the issues such as corruption (IJ1R, IJ7N), communal fights and religious issues (IJ1R, IJ8R), conflicts such as those in the Naxal area (IJ2N, IJ3R, IJ6R) or in Kashmir (IJ6R), unfavourable stories involving prominent and powerful figures (IJ2N, IJ7N) as well as stories relating to the activities of the mafia or the police (IJ3R, IJ6R). IJ4N pointed out that if 'the mafia has the police on their payroll then no one can protect the journalist anyway' (also IJ7N). Mexican journalists identified organised crime and to some extent the government the most fervent defenders of impunity. Although the government might not actively restrict media freedom it doesn't engage in any activities to protect it (MJ1N, MJ3N) either and thereby tolerates attacks on journalists and supports through non-action the existing climate of impunity. Impunity is perceived to be at its worst when the government is complicit in organised crime or when public authorities are connected to the crime (M1JN, MJ3N, MJ8R) - journalists get attacked by criminal organisations and often the authorities and the government (also MJ5R). MJ4N pointed out that criminal gangs have managed to infiltrate members everywhere into the police, corporations, security service and the state and that, according to MJ7R, media freedom in Mexico is in a 'dreadful dreadful' state because of a complicity between drug lords and politicians. Pakistani journalists felt most threatened by the government, terrorists and militants. With regard to the government, our interviewees stated that each time a story is published about a political institution or a powerful politician the journalist who wrote the story risks being threatened (PJ1N, also PJ7R). The government was further criticised as being complicit in the restrictions on media freedom as it censures and influences rather than protects journalists (PJ5R, PJ1N, PJ3N). Journalists also felt that they were left to their own devices as regards their protection because their media organisations don't assume responsibility for their safety. More specifically, PJ1N said that individual organisations cannot protect their

journalists who now often protect themselves by carrying guns and PJ6R pointed out that it was up to journalists to ‘consider how to protect their skin while or after reporting’ (PJ6R). PJ4N pointed out that ‘media organisations are only concerned about news and the rating of their organisation’ (also PJ5R). Correspondingly, PJ3N noted that ‘We [journalists] are least bothered about the safety of our journalists, we need the news story (...) we are not concerned about life and safety...’ which is why there isn’t any training – it is ‘not a priority to keep journalists safe while reporting’.

(2) Perceptions of a lack of solidarity amongst journalists²³ and an attendant feeling of isolation

The feeling of helplessness described above was further exacerbated the lack of journalistic solidarity. Fellow journalists are perceived as not interested in what happens to their colleagues, they don’t report these attacks and thereby don’t provide a feeling of belonging to a community or a feeling of being supported. Ultimately the lack of journalistic solidarity and journalism associations mean that opportunities for common civil resilience or resistance to impunity are non-existent. Bulgarian journalists said that a ‘journalistic community’ in the form of journalism associations that could provide an alternative form of collective protection did not exist. In India, there is equally a lack of journalistic solidarity. This lack combined with a lack of public awareness about attacks on journalists (see below) ensures that crimes against journalists don’t get reported allowing for impunity to continue. More specifically, our interviewees believed that attacks would be reported only by the news organisation the journalist was from (IJ3R) but problematically for raising public awareness some journalists thought that the news organisation did not think that the audience would want to be informed about the killing of journalists (IJ3R, IJ6R, IJ7N).²⁴ The problem of feeling vulnerable and isolated by Mexican journalists is exacerbated by the fact that, according to MJ1N, the media is a weak institution in itself and because of this journalists lack solidarity, as they don’t form civil associations. This circular argument pointed to a sense of resignation about the low status of journalism and its unlikely improvement amongst the Mexican journalists interviewed. In Pakistan, the lack of solidarity amongst journalists and between the media organisation and its journalists is clearly visible. PJ3N noted that ‘We [the media organisation] are least bothered about the safety of our journalists, we need the news story (...) we are not concerned about life and safety...’. Accordingly, journalists feel as if ‘no one really cares about what happens to the journalist later in the field’ - news organisations only ‘care about the equipment’ (PJ6R).

²³ However, in DRC some journalists said that a network of solidarity with associations that aim to protect journalists and monitor attacks against them seemed to have emerged in DRC (DRCJ2N, DRCJ3R, DRCJ4R) and that this gave them hope.

²⁴ This may partially explain the lack of systematic reporting of crimes against journalists.

(3) Perceptions of a continuous direct and indirect threats from government and state-sponsored actors and a feeling of fear

The interviewees showed how they work in an environment of constant threats by the government or state-sponsored actors. They cannot escape these threats, they are present 24/7 ultimately not enabling the journalist to make a distinction between professional and private life. This is valid for both situations – threats against individual journalists become especially significant when they are made against the journalist's family. The Bulgarian government and media owners²⁵ threatened journalists without consequences i.e. with impunity when they put a 'gangster style restriction on information' (BJ1R), when they misuse EU funds, when journalists are phone tapped, intimidated and forced to reveal sources, when journalists are pressured via the prosecution office, official investigations or smears in the media (BJ2N). Sometimes, journalists 'may get a flat tyre, have their car damaged or receive personal threats' leading to 'self-censorship' (BJ5N, also BJ3N, BJ6R, BJ7R and BJ8N). In DRC, threats consist of editorial lines being unduly influenced by politicians (sometimes with the consent of the news editor), politicians attempting to 'use' journalists for positive coverage, intimidation by the national intelligence security services, the seizing of material as well as by conducting abusive arrests and authorising short imprisonments (DRCJ4R). Indian journalists said that the Internet has increasingly been weaponised to target journalists, to abuse and threaten them thereby affecting their psychological well-being (IJ6R). Journalists who 'offend' power holders with their reporting face threats via phone calls or Facebook and intimidation via the boycotting of newspapers or the burning of copies of newspapers (IJ1R). Mexican journalists recognised that journalism was generally compromised and that journalists could easily be put in physical danger if they became a 'person of interest'. Consequently, journalists routinely identify individual safety measures (MJ1N) when researching a potentially controversial story through careful planning, keeping a low profile and making sure contact with editors was maintained. In fact, it was said that journalists need 'a survival instinct, a good culture/system of alerts, common sense, reporter experience and constant communication and permanent contact' (MJ7R). Threats in Pakistan are often targeted at the journalists' family and personal environment. According to PJ1N, if the journalist survives an attack 'the families get pressured and bombs are planted in front of their houses'. Another serious threat was said to emanate from 'militants' who without fear of punishment threaten to kill journalists if they publish unfavourable stories (PJ2N, PJ7R).

²⁵ What this indicates is that it is indeed possible for media organisations to be perceived as being able to threaten journalists without consequences i.e. with impunity. However, only one Bulgarian mentioned this out of the entire sample. As such, we didn't find any specific references to media houses becoming political state-sponsored actors.

(4) Perceptions of a lack of interest by the public and disbelief in daily crimes and threats against journalists²⁶

Independent journalism has the ideal role of holding those in power to account and to inform the public about issues of public concern; issues that are commonly referred to as being in the public interest. This, in turn, enables the civil sphere to be autonomous and to some extent independent of the non-civil spheres (including the political sphere i.e. the state and government). It also enables free debate and democratic citizenship. However, our interviewees pointed to a disconnection between journalists and the public they aim to serve - a disconnection caused by the public's lack of interest, unawareness and disbelief that attacks against journalist are happening, their significance and lack of knowledge about the wide-spread existence of impunity²⁷. In Bulgaria, the public was seen as not to understand the significance of threats against free and independent journalism and to therefore to be rather uninterested in what is happening to journalism in their country. BJ8N lamented that 'society is unfortunately somewhat indifferent', that 'it seeks bread and spectacle' and that 'the audience has been zombified'. In DRC the public is seen to believe that the attacks on journalists are lies and in fact not happening because attackers and perpetrators are not brought to justice (DRCJ7N). Accordingly, so DRCJ7N argued, people don't believe what the Congolese media reports and as such, so DRCJ6N noted, they have started to be more trusting of the foreign press than of the Congolese press. In short, Congolese journalism loses its credibility and has low status. An Indian editor/journalist voiced the opinion that the public hadn't realised the importance of journalists for society and as such, wouldn't understand why these attacks might get/need coverage (IJ4N) and how this might help to combat impunity by bringing the treatment of journalists to public attention. In Pakistan, the reporting of attacks on journalists was seen to have been made impossible due to government sanctions on such reporting via the withdrawal of government advertisements (PJ2N, PJ3N, PJ4N, PJ5R, PJ7R, PJ8R) 'for 6-9 months' and via sudden 'tax audits' (PJ7R) thereby putting at risk the financial viability of media houses.

(5) Perceptions of no legal redress and the feeling of a 'dead-end situation'

The existence of impunity is regularly linked to a breakdown of the rule of law, to the creation of spaces of exception characterised by the loss of personal autonomy as we argue below. In other words, impunity means that there is no way of legal redress for journalists - a situation that makes them feel unsupported, hopeless and 'an easy prey'. Bulgarian journalists emphasised the need for justice reforms (BJ2N,

²⁶ The Mexican journalists didn't share this perception and accordingly didn't refer to this problem in the interviews.

²⁷ On how the public reacts to attacks on journalists see Harrison and Pukallus (2015) and on why it is important for the public to be informed about crimes against journalists see Cottle et al. (2016).

BJ3N, BJ6R) and expressed concerns that no perpetrator had ever been brought to justice and that law suits were unlikely to lead to any significant and helpful outcome (BJ5N, BJ8N). In DRC the majority of interviewees agreed that there aren't any signs of improvement regarding the situation of impunity given that all laws aiming to protect journalists and ensure media freedom that had been tabled in Parliament have never actually been discussed in Parliament (DRCJ1N, DRCJ3R, DRCJ4R, DRCJ7N, DRCJ8R). IJ5N and IJ7N both pointed out that there wasn't any law to protect journalists. According to IJ4N, the killing of journalists is not treated as significant in a way that is different from any other murder or killing – journalists are not considered 'special' and as such, they felt that nothing much happens when for example local journalists who put their lives on the line every day get killed (IJ7N, IJ4N, IJ6R). Mexican journalists equally pointed to the breakdown of the rule of law. MJ1N said that 'impunity is everywhere' and that killing and making journalists disappear came 'at a cheap price'. There wasn't a case in which masterminds or perpetrators had been sentenced. The message being sent is, according to MJ1N, '... anyone can kill a journalist then? Anyone who dislikes you, right?'. Impunity sends a signal that journalists' lives are not of value and is so overt that 'it paralyses you' (MJ1N). MJ2N also agreed that anyone can kill a journalist as continuous impunity guarantees that aggressions against journalists continue – it is like terrorism according to this editor (also MJ4N). In Pakistan, journalists pointed to the 'lack of willpower' to address the issue of violence against journalists exhibited by media organisations as well as the government (for example PJ7R) making it impossible for those attacked to seek legal redress.

(6) Perceptions of an inability to undertake independent journalism and the feeling of loss of professionalism

The pressures caused by continuous threats from the state and state-sponsored actors influence the range of issues being reported, the way in which they are or can be reported and the decision of whether they are reported at all. Investigative independent reporting is made impossible and consequently, journalism loses its very inquisitive essence and its purpose of being.

In Bulgaria, BJ7R described his/her own experience and that of many other journalists of 'set[ting] yourself boundaries that you must not cross in order not to fall into a situation where you have to save yourself in some way'. Impunity has turned Bulgarian journalism into a 'robotic' activity (BJ6R) and 'into a puppet serving some process or agenda' (BJ8N). It has also given birth to a new kind of journalism, one that has 'absolutely no journalistic principles and ethical standards, no sanctions for spreading lies, no accountability, no law suits, protect only certain political, business or other interests, abuse others through orchestrated attacks in the press' (BJ2N, also BJ4R). In other words, journalists have to betray the ideal of ethical and independent journalism and as such, become part of the problem by exhibiting (or

having to exhibit) a 'lack of respect for rules and professional standards' as well as 'self-regulation' (BJ7R). In DRC, DRCJ4R noted that one of the effects of impunity is that journalists' power is reduced, that their work becomes mediocre (also DRCJ1N) and that issues of public interest don't get reported (DRCJ8R). This is exacerbated by the fact that access to government politicians is only granted if the journalist is known to report in favour of the government (DRCJ4R, DRCJ6N). Therefore, journalists have started to play a dangerous 'double-game' meaning that they pretend to be on both sides – that of the government and that of the opposition (DRCJ7N, DRCJ8R). However, journalists often leave their profession out of fear of being indexed and becoming specific targets (DRCJ4R, DRCJ5R). Impunity is seen to silence journalists and to make their investigative watchdog role impossible (DRCJ4R, DRCJ6N). The Indian government was seen to 'punish' news organisations for unfavourable reporting by stopping advertisements and other services (IJ1R) leading to less and less investigation and scrutiny of political institutions (IJ4N, also IJ5N). Equally, media organisations have stopped supporting their staff who undertake scrutiny of government officials. In fact, some journalists who reported against the government were denied their salaries (IJ3R, IJ4N). Another problem Indian journalists face is the 'I scratch your back you scratch mine' policy where certain stories are not aired as a favour to someone in power (IJ4N) and by accepting bribery from fundamentalist groups for the non-publication of certain stories (IJ1R). Impunity has made it equally difficult for Mexican journalists to protect independent journalism that is in the public interest. MJ2N said that journalists travel less now and report less directly from the scene, as this is often too dangerous. MJ7R pointed out that when reporting a story it was necessary to identify the part of the story that would put the journalist/news organisation at risk and then decide whether to cut this part or write it in a 'soft' way. Sometimes, so MJ4N admitted, it was however, in the public interest for journalists to take risks. These risks had to be weighed up though – by asking 'is this a story that is worth the risk?' MJ5R said stories worth taking a risk for are those which are 'full of clearly verified facts, confirmed, with images' to which J6R added that it was important to choose reporters with experience who were able to understand and evaluate risks (also MJ8R). Pakistani journalists felt that their work was undermined by the government putting measures in place that hindered newsgathering and access to information (PJ4N) and by pressuring or making attempts to bribe journalists to reveal their sources (PJ1N). Impunity from such actions was seen to contribute to the loss of independent journalism (PJ1N, PJ4N, PJ5R) exacerbating the tendency of journalists to drop a story if it touches on sensitive issues despite it being in the public interest (PJ2N) because it raises obvious safety issues for both journalists (PJ4N) and their families (PJ7R, PJ8R). Consequently, the journalism community was perceived to lack certain values, regulations, ethics and morality – all pointing to journalists 'giving in' and adapting to the situation as upholding these values would be too dangerous.

(7) Perceptions of an inevitability and inescapability of self-censorship

Ultimately our interviewees show that self-censorship becomes the only way to protect oneself as a journalist and the only way to survive an environment of impunity in which attacks and threats against journalists and their families have become part of journalists' daily lives. The Bulgarian journalist BJ4R noted that the 'journalists' [need to] ensure [that] they do not affect the person on whom they depend for a salary' which leads to 'high levels of self-censorship' - even more so because, as BJ3N noted, 'if a journalist is sacked he/she is virtually sacked from all media outlets'. Accordingly, fear amongst journalists leads to 'increasing homogeneity in press coverage' and prevents the reporting of the 'truth about the government and the Bulgarian State' (BJ3N). Overall, 'self-censorship [becomes] very normal' as 'journalists don't dare to write about serious issues' (BJ3N, also BJ4R, BJ8N). In DRC impunity has led journalists to leave their profession out of fear of being indexed and becoming specific targets (DRCJ4R, DRCJ5R). Impunity is seen to silence journalists and to make their investigative watchdog role impossible (DRCJ4R, DRCJ6N). Self-censorship has become a necessity. Indian journalists noted that the use of commercial pressure with impunity turns media houses into corporate houses leading to journalists having to adopt an editorial line – to self- censor – and being punished for not doing so (IJ3R, IJ4N). In Mexico, MJ7R pointed out that when reporting a story it was necessary to identify the part of the story that would put the journalist/news organisation at risk and then decide whether to cut this part or write it in a 'soft' way. In other words, as noted, self-censorship is key to the survival of the individual journalist (MJ4N). Overall, impunity for those who attack journalists has led to more distrust and more corruption and self-censorship. As such, impunity is seen as a risk to individual journalists but also to journalism as an institution. Pakistani journalists said that self-censorship mainly occurs at the moment of story selection. If a story is understood as being too dangerous to report it is often not reported out of a safety concern (PJ3N, PJ4N, PJ6R). Dangerous topics to report include the war on terror (PJ1N, PJ3N, PJ8R), militancy (PJ2N, PJ3N, PJ5R, PJ7R), political power and government corruption (PJ1N, PJ2N), scandals about judiciary, security agencies, political parties, the establishment (PJ4N, also PJ5R, PJ7R, PJ8R) and the mafia (PJ7R).

The 'Politics of Impunity'

What the interviewees have confirmed is that we need to go beyond simply defining impunity in legal terms if we want to understand how impunity is perceived and experienced by journalists themselves and the effects impunity has on their legal, political and civil terms. The perceptions expressed and captured by us in the typology of impunity are best understood in terms of what we call the 'Politics of Impunity'. It shows that impunity is not simply a state of affairs that can just be

statistically measured and evaluated, but that in fact needs to be understood as a policy of governance – one that is actively used by the state either by paradoxically doing ‘nothing’, that is by ignoring crimes of non-state actors, or by actively being complicit in attacks against journalists, even ordering them.²⁸ In both cases, impunity is used as a tool to achieve a specific political outcome: journalistic self-censorship. The aim of using impunity as a political tool is not necessarily an attempt to impose a public morality or an ideological standpoint on a people (though it may appear that way), but rather a way of maintaining political control over the extent of public knowledge and the subject matter of public discourse. It is in this sense that impunity is political and used in a self-serving way by those who wish to retain power or control without necessarily being seen to be overtly the censor. Impunity has led to self-censorship which is ‘conducted internally by the media in order to avoid annoying or offending someone (and thus avoid a possible sanction or punishment), without being specifically told or ordered to do so officially by an external censor’ (Simons and Strovsky, 2006: 191).

When states or state-sponsored actors use impunity as a political tool they choose to ignore their legal obligations²⁹ such as their duty to protect certain fundamental often constitutionally enshrined rights, most notably freedom of expression. This was expressed by the interviewees in their comments that there was no protection by the government and no legal redress regarding the violation of their rights. In fact, our interviewees pointed to two consequences of impunity that make self-censorship inescapable and inevitable.

These two consequences are first, the loss of private autonomy and second, ‘exile’ into a space of exception. It is these two consequences that represent the most significant and pernicious impacts upon journalists and their daily attempts to undertake independent journalism. The loss of private autonomy for journalists means that individual, legal and constitutional rights to freedom of expression are no longer protected or guaranteed by political power. This loss occurs when these rights are suspended with impunity either directly by the state or indirectly when the state endorses the violent actions of state-sponsored actors. The impact of such a loss of autonomy is significant as journalists find themselves no longer protected as journalist – because often such protective laws don’t exist or aren’t upheld – and no longer protected as citizens because they are journalists. As such, the loss of the private autonomy for journalists is equal to being stripped of citizenship protected

²⁸ We thank reviewer 3 for this helpful insight.

²⁹ See also *Özgür Gündem v Turkey* (para. 43) on the state’s obligation to put in place ‘positive measures of protection even in the sphere of relations between individuals’ and *Dink v Turkey* on the state’s obligation to protect life when it knows about dangers and hostility towards it.

by the Constitution or other forms of fundamental laws. This loss is occasioned by the creation of spaces of exception into which journalists are exiled.

In other words, journalists find themselves in a space in which the legal protection of their rights is absent, where they are 'marked outcast through the operation of sovereign power' and where they lose their legal identity as citizens and correspondingly struggle to retain a semblance of their identity as journalists. By committing the 'crime' of undertaking independent journalism a journalist puts him/herself outside the law and becomes 'ipso facto an outlaw, a hostis [enemy], a rebel or an enemy of the homeland' and by consequence, that journalist is 'put outside the law [vogelfrei] and becomes automatically the object of an arbitrary execution' (Schmitt, 2014: 152). The journalist is simultaneously within and beyond the legal order. It is these political-legal consequences of impunity that lie at the root of what journalists often express as the feeling that their life 'isn't worth anything', 'that their lives don't matter', 'that there is no solution' (see above). What is felt is the consequence of an essentially political and legal decision with regard to the withdrawal of political protection combined with the loss of effective citizenship. These political-legal spaces of exception have become the global norm for journalists who work under the circumstances of the use of impunity.

Conclusion

Overall, impunity works to achieve self-censorship by the deliberate deprivation of private autonomy brought about by the enforced exile of journalists into a 'space of exception'. Such spaces legitimise the use of violence and intimidation against journalists and have become a persistent feature of modern governance around the world. Their relative invisibility allows states to claim that they endorse media freedom and that their constitutions protect it while actively utilising impunity to prevent journalists from doing their job. Indeed our study of perceptions of impunity in Bulgaria, Democratic Republic of Congo, India, Mexico and Pakistan supports Agamben's (2005: 87) view that 'the state of exception has today reached its maximum worldwide deployment. The normative aspect of law can thus be obliterated and contradicted with impunity by a governmental violence that – while ignoring international law externally and producing a permanent state of exception internally – nevertheless still claims to be applying the law'. The final question now concerns the societal outcomes of a climate of impunity where impunity is understood as a policy of governance and where it is constructed around the use of spaces of exception and the loss of private autonomy to produce a desired political outcome - precisely a self-censoring press. In short, what sort of journalistic environment is impunity a sign of?

Under a regime of impunity journalists are no longer protected by the application of constitutional provision or law enforcement. Consequently, their safety becomes their own responsibility, a private concern to be undertaken without recourse to the provision by the state of personal security. Following on from this and using the findings from our study it seems reasonable to suggest that such a journalistic environment would always have the following two features. First, the liberally inspired professional standards of (investigative) journalism cannot be upheld neither can their accompanying ethical guidelines be followed. Accordingly, journalism is reduced to being an uncritical 'puppet' or a 'robotic activity' and unable to carry out its role of holding political power accountable. Second, there exists a form of 'public disbelief' in the existence of impunity because it is commonly held that 'we live in a free country' that has a constitution that 'protects journalists'. Consequently, state proscribed journalists are perceived as 'disloyal', 'unpatriotic', 'fifth columnists', 'outlaws' and as 'enemies from within'. They, to use today's jargon, can be cast as purveyors of 'fake news'. Overall, the stock of public knowledge and capacity for deliberation and debate is diminished and trust in an independent media minimised. In short, journalism as a civil institution is compromised (Alexander 2006, 2016 and Harrison forthcoming) or as one journalist succinctly put it 'impunity paralyses' journalism.

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