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**Contribution by Reporters Without Borders (RSF),
an NGO with special consultative status, on media freedom
and the freedom to inform in France**

Reporters Without Borders (RSF) is a non-governmental organization that has been promoting media freedom worldwide since 1985. It has consultative status with the United Nations.

France is ranked 39th in RSF's 2017 World Press Freedom Index, a position that reflects the decline in the level of media freedom in this country. Media concentration, the lack of protection for journalists' sources, threats to editorial independence, abusive judicial proceedings against journalists and threats to their security – France was not asked to address these issues during the previous Universal Periodic Review in 2013 but RSF would like to raise them now with the Council and the French government.

1. Inadequate protection for the confidentiality of sources

The confidentiality of journalists' sources is essential for their work and is one of the cornerstones of media freedom. This is recognized, among others, in the 1971 Munich Charter. In practice, the mechanisms for protecting this confidentiality are inadequate in France today. The 2010 Dati Law, which is currently in effect, does not provide a sufficiently clear definition of the circumstances that could justify overriding this vital principle. It says a "paramount public interest imperative" justifies lifting a source's confidentiality. This is very vague. In the Bettencourt case, it allowed the prosecutor to examine the phone records of *Le Monde*'s journalists with the aim of identifying their sources. In order to prevent a recurrence of this type of violation, new legislative protection is needed. The provisions of article 4 of the Law aiming to reinforce media freedom, independence and pluralism, the so-called Bloche Law, adopted in November 2016, promised progress until they were struck down by the Constitutional Court.

The terrorism laws of recent years have resulted in a considerable increase in the surveillance powers of the authorities over the entire population. Under these laws, a special procedure is needed to place journalists under surveillance but their sources do not enjoy the same guarantees and may be placed under surveillance without any special procedure. The ability

of journalists' sources to protect their anonymity is thereby rendered more or less illusory, posing a serious threat to journalism, especially investigative journalism.

2. Journalists roughed up, threatened

Three media outlets – *Mediapart*, *Le Canard Enchaîné* and *Le Journal du Dimanche* – received death threats as a result of the revelations they published in April 2017 about a presidential candidate. These exceptionally violent intimidation attempts reflect an increasingly difficult climate for investigative journalism and journalists, who have repeatedly been the victims of attacks that are growing in intensity.

Paradoxically, journalists often get a “bad press” in France. This was made especially clear during the 2017 presidential election and the preceding campaign. Politicians did not hesitate to question the legitimacy of their activities, using their speeches to feed a climate of hatred towards the media. At a political rally in Poitiers on 9 February 2017, for example, Jean Pierre Raffarin and François Fillon of the party Les Républicains got the crowd to boo journalists. At the end of the rally, a party supporter slapped *Le Quotidien* reporter Hugo Clément. Such physical and verbal violence became common in the course of the presidential election campaign. Called “democracy’s watchdogs” by the European Court of Human Rights, journalists are often the targets of verbal and even physical violence by ordinary members of the public, by party activists and even by representatives of private security companies.

It is also getting more and more difficult for journalists to operate in the field and at public events. They have been the victims of violence and clashes while covering protests in France in recent years, especially protests against the labour reforms in the spring of 2016. There have been cases of excesses, inappropriate behaviour and deliberate violence by law enforcement officers, who are supposed to keep the peace. Some have deliberately targeted journalists without ever being held to account.

3. Media concentration, threats to media independence

In France, the concentration of media ownership in few hands and the lack of ownership transparency feed the lack of public trust in the media's news coverage. The 1986 law on freedom of communication limits media concentration by imposing certain ceilings, especially as regards audience share and revenue. These provisions are largely obsolete nowadays inasmuch as they do not restrain vertical concentration and do not address sideways ownership across broadcasting, Internet and telephony. The lack of media shareholder transparency often masks the scale of ownership concentration.

As a result, many newspapers, radio stations and TV channels are owned by big businessmen whose interests in other sectors of the economy are favoured by their acquisition of stakes in media groups. Vincent Bolloré is a good example. Vivendi's main shareholder, this businessman also has stakes in three TV channels, *Canal +*, *C8* and *C News*, in the free newspaper *Cnews Matin* and the PR firm *Havas*. After he acquired *Canal +* in the summer of 2015, a dispute ensued with its staff and with the staff of its subsidiary, the 24-hour TV news channel *iTélé*. It developed into the second biggest dispute in the broadcasting sector since May 1968 and led to the resignation of many of its journalists, who objected to management interference in editorial decisions. So this acquisition posed not only an issue as regards media concentration but also as regards media pluralism and editorial independence.

4. Conflicts of interest, influence trafficking

The strike at *iTélé* in October 2016 highlighted the inadequacy of the current laws and the inability of regulators to guarantee the independence of news staff. Vincent Bolloré had named the same close associate not only as *iTélé*'s CEO but also as its news director, a dual appointment that showed the permeability of editorial policy to influence by media owners. At Bolloré's request, a story on Crédit Mutuel, a French bank run by one of his friends, was dropped in September 2015. *Canal +* also dropped an irreverent highlights programme called "Le Zapping" and its Special Investigation series. These developments starkly illustrated the impact of this management style on media independence. And Bolloré is not an isolated case.

Serge Dassault, the owner of the *Figaro* media group, is at the same time a leading industrialist (main shareholder and chairman of the Dassault aviation group, which depends largely on state contracts) and a politician (senator for Essonne since 2004). As a result of this mix of roles, there is a danger of serious conflicts of interest, between the imperatives of independent journalism and political or industrial considerations.

Patrick Drahi has a presence in TV, print media and radio as well as several other economic sectors. He is the owner of *NextRadioTV*, *BFM-TV*, *BFM Business*, *RMC*, *RMC Découverte*, *Libération*, *L'Express*, *L'Expansion*, *Point de Vue*, *Studio Cinélive*, *L'Etudiant* and *i24news*. The construction group Bouygues, which owns the TV channel *TF1*, also benefits from state construction contracts.

The danger of conflicts of interest has never been so great, undermining the independence of journalists and newsrooms, and therefore media freedom.

5. Abusive judicial proceedings

Under the Bloche Law, adopted in November 2016 and then partially struck down, which aimed at reinforcing media freedom, independence and pluralism, it would have ceased to be a crime for journalists to breach professional confidentiality or the confidentiality of a judicial investigation, if the published information "constituted a legitimate goal in a democracy." RSF supported this provision because it would undoubtedly have helped to limit the judicial harassment to which some news media are subjected.

Politicians often bring abusive legal actions with the aim of silencing journalists. *Mediapart*, a newspaper known for its investigative reporting, and other media outlets have been repeated victims. The politicians resorting to these methods include National Front president Marine Le Pen, who sued two journalists for investigating her party's finances. It is nonetheless unacceptable that journalists should be prosecuted – and on charges punishable by imprisonment – when they are just divulging information in the public interest. Furthermore, journalists who are the victims of such proceedings have few ways of demonstrating their abusive nature.

The grounds used for prosecuting journalists are not limited to "violating the secrecy of a judicial investigation". Les Républicains presidential candidate François Fillon brought a complaint against *Le Canard Enchaîné* on grounds unrelated to the 1881 press law. In the so-called "Penelopegate" affair, he accused the newspaper of violating article 97 of the electoral

code, which penalizes the publication of “false news” or “defamatory rumours” with the aim of influencing voters.

Defamation actions are also used in an abusive fashion. In November 2016, the Bolloré group went so far as to use a Cameroon subsidiary, Socapalm, to bring a defamation suit in Cameroon against *France Télévisions* in order to bypass French law, which provides much more protection for freedom of expression than Cameroonian law. The lawsuit was brought in response to a report by the *France Télévisions* programme Complément d’Enquête about the Bolloré group’s activities in Cameroon.

6. Perverting the press law

The Law of 1881, the fundamental law on freedom of the press in France, establishes specific procedural guarantees that define and limit the possibilities of bringing lawsuits against journalists. In recent years, legislators have nonetheless repeatedly tried to make it easier to bring defamation actions and obtain damages. By making it easier to punish abuses of freedom of expression at the expense of protecting this fundamental freedom, they are subverting the equilibrium of what is one of the French Republic’s great laws. The goal of combatting abuse of free speech is a legitimate one, but it should not weaken the law’s protection of journalism.

RSF’s recommendations:

- Respect the role of the media and the work of journalists; combat all verbal attacks and attempts to question legitimate journalism.
- Maintain the equilibrium of the Law of 1881.
- Ensure that journalists have unrestricted access to public events and guarantee their safety when they cover them.
- Provide legislative guarantees for the confidentiality of journalists’ sources.
- Prevent surveillance of journalists in connection with their work.
- Decriminalize violation of professional confidentiality, violation of the confidentiality of a judicial investigation and invasion of privacy for journalists in connection with their work
- Establish mechanisms for preventing lawsuits against journalists.
- Prevent conflicts of interest in the media by reinforcing editorial independence vis-à-vis shareholders, advertisers and all external parties, especially in media outlets whose shareholders largely depend on state contracts.
- Take measures to combat vertical concentration of ownership in the media and ensure ownership transparency.